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SENATE BILL 233

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Michael S. Sanchez

AN ACT

**RELATING TO CHILDREN; MAKING REVISIONS TO THE CHILDREN'S CODE;
AMENDING, REPEALING AND ENACTING SECTIONS OF CHAPTER 32A NMSA
1978; RECONCILING MULTIPLE AMENDMENTS TO THE NMSA 1978 BY
REPEALING LAWS 2003, CHAPTER 225, SECTION 10.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 32A-1-4 NMSA 1978 (being Laws 1993,
Chapter 77, Section 13, as amended) is amended to read:**

"32A-1-4. DEFINITIONS. --As used in the Children's Code:

**A. "adult" means a person who is eighteen years of
age or older;**

**B. "child" means a person who is less than eighteen
years old;**

**C. "court", when used without further
qualification, means the children's court division of the**

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1 district court and includes the judge, special master or
2 commissioner appointed pursuant to the provisions of the
3 Children's Code or supreme court rule;

4 D. "court appointed special advocate" or "CASA"
5 means a person appointed as a CASA, pursuant to the provisions
6 of the Children's Court Rules, who assists the court in
7 determining the best interests of the child by investigating
8 the case and submitting a report to the court;

9 E. "custodian" means ~~[a person, other than a parent~~
10 ~~or guardian, who exercises physical control, care or custody of~~
11 ~~the child, including an employee of a residential facility or a~~
12 ~~person providing out-of-home care]~~ an adult with whom the child
13 lives who is not a parent or guardian of the child;

14 F. "department" means the children, youth and
15 families department, unless otherwise specified;

16 G. "foster parent" means a person, including a
17 relative of the child, licensed or certified by the department
18 or a child placement agency to provide care for children in the
19 custody of the department or agency;

20 H. "guardian" means ~~[the]~~ a person ~~[having the duty~~
21 ~~and authority of guardianship]~~ appointed as a guardian by a
22 court or Indian tribal authority or a person authorized to care
23 for the child by a parental power of attorney as permitted by
24 law;

25 ~~[I. "guardianship" means the duty and authority to~~

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1 ~~make important decisions in matters having a permanent effect~~
2 ~~on the life and development of a child and to be concerned~~
3 ~~about the child's general welfare and includes:~~

4 ~~(1) the authority to consent to marriage, to~~
5 ~~enlistment in the armed forces of the United States or to major~~
6 ~~medical, psychiatric and surgical treatment;~~

7 ~~(2) the authority to represent the child in~~
8 ~~legal actions and to make other decisions of substantial legal~~
9 ~~significance concerning the child;~~

10 ~~(3) the authority and duty of reasonable~~
11 ~~visitation of the child;~~

12 ~~(4) the rights and responsibilities of legal~~
13 ~~custody when the physical custody of the child is exercised by~~
14 ~~the child's parents, except when legal custody has been vested~~
15 ~~in another person; and~~

16 ~~(5) when the rights of the child's parents~~
17 ~~have been terminated as provided for in the laws governing~~
18 ~~termination of parental rights or when both of the child's~~
19 ~~parents are deceased, the authority to consent to the adoption~~
20 ~~of the child and to make any other decision concerning the~~
21 ~~child that the child's parents could have made;~~

22 J.] I. "guardian ad litem" means an attorney
23 appointed by the children's court to represent and protect the
24 best interests of the child in a court proceeding; provided
25 that no party or employee or representative of a party to the

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1 proceeding shall be appointed to serve as a guardian ad litem;

2 ~~[K-]~~ J. "Indian child" means an unmarried person
3 who is:

- 4 (1) less than eighteen years old;
5 (2) a member of an Indian tribe or is eligible
6 for membership in an Indian tribe; and
7 (3) the biological child of a member of an
8 Indian tribe;

9 ~~[L-]~~ K. "Indian child's tribe" means:

- 10 (1) the Indian tribe in which an Indian child
11 is a member or eligible for membership; or
12 (2) in the case of an Indian child who is a
13 member or eligible for membership in more than one tribe, the
14 Indian tribe with which the Indian child has more significant
15 contacts;

16 L. "Indian tribe" means a federally recognized
17 Indian tribe, community or group pursuant to 25 U.S.C. §
18 1903(1);

19 M "judge", when used without further
20 qualification, means the judge of the court;

21 N. "legal custody" means a legal status created by
22 ~~[the]~~ order of the court or other court of competent
23 jurisdiction or by operation of statute that vests in a person,
24 department or agency the right to determine where and with whom
25 a child shall live; the right and duty to protect, train and

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1 discipline the child and to provide the child with food,
2 shelter, personal care, education and ordinary and emergency
3 medical care; the right to consent to major medical,
4 psychiatric, psychological and surgical treatment and to the
5 administration of legally prescribed psychotropic medications
6 pursuant to the Children's Mental Health and Developmental
7 Disabilities Act; and the right to consent to the child's
8 enlistment in the armed forces of the United States; [~~all~~
9 ~~subject to the powers, rights, duties and responsibilities of~~
10 ~~the guardian of the child and subject to any existing parental~~
11 ~~rights and responsibilities. A person granted legal custody of~~
12 ~~a child shall exercise the rights and responsibilities as~~
13 ~~custodian personally, unless otherwise authorized by the court~~
14 ~~entering the order;~~]

15 0. "parent" or "parents" includes a biological or
16 adoptive parent if the biological or adoptive parent has a
17 constitutionally protected liberty interest in the care and
18 custody of the child; [~~A parent retains all of the duties and~~
19 ~~authority of guardianship and legal custody of the child,~~
20 ~~unless otherwise limited or altered by court order]~~

21 P. "permanency plan" means a determination by the
22 court that the child's interest will be served best by:

- 23 [(1) ~~return to the parent;~~
24 (2) ~~placement with a person who will be the~~
25 ~~child's permanent guardian;~~]

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(1) reunification

~~[(3)]~~ (2) placement for adoption after the parents' rights have been relinquished or terminated or after a motion has been filed to terminate parental rights;

(3) placement with a person who will be the child's permanent guardian;

(4) placement in the legal custody of the department with the child placed in the home of a fit and willing relative; or

(5) placement in the legal custody of the department under a planned permanent living arrangement;

Q. "person" means an individual or any other form of entity recognized by law;

R. "preadoptive parent" means a person with whom a child has been placed for adoption;

S. "protective supervision" means the right to visit the child in the home where the child is residing, inspect the home, transport the child to court-ordered diagnostic examinations and evaluations and obtain information and records concerning the child;

T. "reunification" means either a return of the child to the parent or to the home from which the child was removed or a return to the noncustodial parent;

~~[S.]~~ U. "tribal court" means:

(1) a court established and operated pursuant

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1 to a code or custom of an Indian tribe; or

2 (2) any administrative body of an Indian tribe
3 that is vested with judicial authority;

4 [~~F.~~] V. "tribal court order" means a document
5 issued by a tribal court that is signed by an appropriate
6 authority, including a judge, governor or tribal council
7 member, and that orders an action that is within the tribal
8 court's jurisdiction; and

9 [~~U.~~] W. "tribunal" means any judicial forum other
10 than the court."

11 Section 2. Section 32A-1-6 NMSA 1978 (being Laws 1993,
12 Chapter 77, Section 15, as amended) is amended to read:

13 "32A-1-6. CHILDREN'S COURT ATTORNEY. --

14 A. The "office of children's court attorney" is
15 established in each judicial district. Except as provided by
16 Subsection C, D or E of this section, each district attorney is
17 the ex-officio children's court attorney for the judicial
18 district of the district attorney.

19 B. Except as provided by Subsection C, D or E of
20 this section, the children's court attorney may represent the
21 state in any matter arising under the Children's Code when the
22 state is the petitioner or complainant. The children's court
23 attorney shall represent the petitioner in matters arising
24 under the Children's Code when, in the discretion of the judge,
25 the matter presents legal complexities requiring representation

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1 by the children's court attorney, whether or not the state is
2 petitioner or complainant, but not in those matters when there
3 is a conflict of interest between the petitioner or complainant
4 and the state. A petitioner or complainant may be represented
5 by counsel in any matter arising under the Children's Code.

6 C. In cases involving civil abuse or civil neglect
7 and the periodic review of their dispositions, the attorney
8 selected by and representing the department is the children's
9 court attorney. The attorney selected by and representing the
10 department shall provide the district attorney of the
11 appropriate judicial district with a copy of any abuse or
12 neglect petition filed in that judicial district. Upon the
13 request of the district attorney, the attorney selected by and
14 representing the department shall provide the district attorney
15 with reports, investigations and pleadings relating to any
16 abuse or neglect petition.

17 D. In cases involving families in need of court-
18 ordered services, the periodic review of their dispositions and
19 voluntary placements, the attorney selected by and representing
20 the department is the children's court attorney. The attorney
21 selected by and representing the department shall provide the
22 district attorney of the appropriate judicial district with a
23 copy of any family in need of court-ordered services petition
24 filed in that judicial district. Upon the request of the
25 district attorney, the attorney selected by and representing

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1 the department shall provide the district attorney with
2 reports, investigations and pleadings relating to any family in
3 need of court-ordered services petition.

4 E. In cases involving a child subject to the
5 provisions of the Children's Mental Health and Developmental
6 Disabilities Act that also involves civil abuse, civil neglect
7 or a family in need of court-ordered services, the attorney
8 selected by and representing the department is the children's
9 court attorney. In cases involving a child subject to the
10 provisions of the Children's Mental Health and Developmental
11 Disabilities Act that does not also involve civil abuse, civil
12 neglect or a family in need of court-ordered services, the
13 district attorney is the ex-officio children's court attorney.

14 F. In those counties where the children's court
15 attorney has sufficient staff and the workload requires it, the
16 children's court attorney may delegate children's court
17 functions to a staff attorney."

18 Section 3. Section 32A-1-7 NMSA 1978 (being Laws 1993,
19 Chapter 77, Section 16, as amended) is amended to read:

20 "32A-1-7. GUARDIAN AD LITEM - POWERS AND DUTIES. --

21 A. A guardian ad litem shall zealously represent
22 the child's best interests [~~with respect to matters arising~~
23 ~~pursuant to the provisions of the Children's Code.~~

24 B. ~~A guardian ad litem shall represent the child~~
25 ~~during any appellate proceedings] in the proceeding for which~~

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1 the guardian ad litem has been appointed and in any subsequent
2 appeals.

3 B. Unless excused by a court, a guardian ad litem
4 appointed to represent a child's best interests shall continue
5 the representation in any subsequent appeals.

6 C. Any party may petition the court for an order to
7 remove a guardian ad litem on the grounds that the guardian ad
8 litem has a conflict of interest or is unwilling or unable to
9 zealously represent the child's best ~~[interest]~~ interests.

10 D. After consultation with the child, a guardian ad
11 litem shall convey the child's declared position to the court
12 at every hearing.

13 ~~[D.—When]~~ E. Unless a child's circumstances render
14 the following duties and responsibilities ~~[reasonable and~~
15 ~~appropriate, the]~~ unreasonable, a guardian ad litem shall:

16 (1) meet with and interview the child prior to
17 custody hearings, adjudicatory hearings, dispositional
18 hearings, judicial reviews and any other hearings scheduled in
19 accordance with the provisions of the Children's Code;

20 ~~[(2) present the child's declared position to~~
21 ~~the court;~~

22 ~~(3)]~~ (2) communicate with health care, mental
23 health care and other professionals involved with the child's
24 case;

25 ~~[(4)]~~ (3) review medical and psychological

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1 reports relating to the child and the respondents;

2 [~~(5)~~] (4) contact the child prior to any
3 proposed change in the child's placement;

4 [~~(6)~~] (5) contact the child after changes in
5 the child's placement;

6 [~~(7)~~] (6) attend local substitute care review
7 board hearings concerning the child and if unable to attend the
8 hearings, forward to the board a letter setting forth the
9 child's status during the period since the last local
10 substitute care review board review and include an assessment
11 of the department's permanency and treatment plans;

12 [~~(8)~~] (7) report to the court on the child's
13 adjustment to placement, the department's and respondent's
14 compliance with prior court orders and treatment plans and the
15 child's degree of participation during visitations; and

16 [~~(9)~~] (8) represent and protect the cultural
17 needs of the child.

18 [~~E.~~] E. A guardian ad litem may retain separate
19 counsel to represent the child in a tort action on a
20 contingency fee basis or any other cause of action in
21 proceedings that are outside the jurisdiction of the children's
22 court. When a guardian ad litem retains separate counsel to
23 represent the child, the guardian ad litem shall provide the
24 court with written notice within ten days of retaining the
25 separate counsel. A guardian ad litem shall not retain or

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1 subsequently obtain any pecuniary interest in an action filed
2 on behalf of the child outside of the jurisdiction of the
3 children's court. [~~without permission of the children's court,~~
4 ~~pursuant to rules promulgated by the supreme court.~~

5 F.] G. In the event of a change of venue, the
6 originating guardian ad litem shall remain on the case until a
7 new guardian ad litem is appointed by the court in the new
8 venue and the new guardian ad litem has communicated with and
9 received all pertinent information from the former guardian ad
10 litem.

11 H. A guardian ad litem shall receive notices,
12 pleadings or other documents required to be provided to or
13 served upon a party. A guardian ad litem may file motions and
14 other pleadings and take other actions consistent with the
15 guardian ad litem's powers and duties.

16 I. A guardian ad litem shall not serve concurrently
17 as both the child's delinquency attorney and guardian ad
18 litem."

19 Section 4. Section 32A-1-8 NMSA 1978 (being Laws 1993,
20 Chapter 77, Section 17, as amended by Laws 1999, Chapter 46,
21 Section 1 and also by Laws 1999, Chapter 78, Section 1) is
22 amended to read:

23 "32A-1-8. JURISDICTION OF THE COURT--TRIBAL COURT
24 JURISDICTION.--

25 A. The court has exclusive original jurisdiction of

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1 all proceedings under the Children's Code in which a person is
2 eighteen years of age or older and was a child at the time the
3 alleged act in question was committed or is a child alleged to
4 be:

5 (1) a delinquent child;

6 (2) a child of a family in need of court-
7 ordered services or a child in need of services pursuant to the
8 Family in Need of Services Act;

9 (3) a neglected child;

10 (4) an abused child;

11 (5) a child subject to adoption; or

12 (6) a child subject to placement for a
13 developmental disability or a mental disorder.

14 B. The court has exclusive original jurisdiction to
15 emancipate a minor.

16 C. During abuse or neglect proceedings in which New
17 Mexico is the home state, pursuant to the provisions of the
18 Uniform Child-Custody Jurisdiction and Enforcement Act, the
19 court shall have jurisdiction over both parents to determine
20 the best interest of the child and to decide all matters
21 incident to the court proceedings.

22 D. Nothing in this section shall be construed to in
23 any way abridge the rights of any Indian tribe to exercise
24 jurisdiction over child custody matters as defined by and in
25 accordance with the federal Indian Child Welfare Act of 1978.

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1 E. A tribal court order pertaining to an Indian
2 child in an action under the Children's Code shall be
3 recognized and enforced by the district court for the judicial
4 district in which the tribal court is located. A tribal court
5 order pertaining to an Indian child that accesses state
6 resources shall be recognized and enforced pursuant to the
7 provisions of intergovernmental agreements entered into by the
8 Indian child's tribe and the department or another state
9 agency. An Indian child residing on or off a reservation, as a
10 citizen of this state, shall have the same right to services
11 that are available to other children of the state, pursuant to
12 intergovernmental agreements. The cost of the services
13 provided to an Indian child shall be determined and provided
14 for in the same manner as services are made available to other
15 children of the state, utilizing tribal, state and federal
16 funds and pursuant to intergovernmental agreements. The tribal
17 court, as the court of original jurisdiction, shall retain
18 jurisdiction and authority over the Indian child."

19 Section 5. Section 32A-1-9 NMSA 1978 (being Laws 1993,
20 Chapter 77, Section 18, as amended) is amended to read:

21 "32A-1-9. VENUE AND TRANSFER. --

22 A. Proceedings in the court under the provisions of
23 the Children's Code shall begin in the county where the child
24 resides. If delinquency is alleged, the proceeding may also be
25 begun in the county where the act constituting the alleged

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1 delinquent act occurred or in the county in which the child is
2 detained. Neglect, abuse, family in need of court-ordered
3 services or mental health proceedings may also begin in the
4 county where the child is present when the proceeding is
5 commenced.

6 B. The venue for proceedings under other laws will
7 be determined by the venue provisions of the other laws. If
8 the other laws contain no venue provisions, then the venue and
9 transfer provisions of Subsections A and C of this section
10 apply.

11 C. If a proceeding is begun in a court for a county
12 other than the county in which the child resides, that court,
13 on its own motion or on the motion of a party made at any time
14 prior to disposition of the proceeding, may transfer the
15 proceeding to the court for the county of the child's residence
16 for such further proceedings as the receiving court deems
17 proper. A like transfer may be made if the residence of the
18 child changes during or after the proceeding. Certified copies
19 of all legal and social records pertaining to the proceeding
20 shall accompany the case on transfer.

21 D. In neglect, abuse, family in need of court-
22 ordered services or adoption proceedings for the placement of
23 an Indian child, the court shall, in the absence of good cause
24 to the contrary, transfer the proceeding to the jurisdiction of
25 the Indian child's tribe upon the petition of the Indian

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1 child's parent, the Indian child's [~~custodian~~] guardian or the
2 Indian child's tribe. The transfer shall be barred if there is
3 an objection to the transfer by a parent of the Indian child or
4 the Indian child's tribe. "

5 Section 6. Section 32A-1-11 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 20) is amended to read:

7 "32A-1-11. PETITION--FORM AND CONTENT.--A petition
8 initiating proceedings pursuant to the provisions of
9 Chapter [~~32~~] 32A, Article 2, 3B, 4 or 6 NMSA 1978 shall be
10 entitled, "In the Matter of, a child", and shall
11 set forth with specificity:

12 A. the facts necessary to invoke the jurisdiction
13 of the court;

14 B. if violation of a criminal statute or other law
15 or ordinance is alleged, the citation to the appropriate law;

16 C. the name, birth date and residence address of
17 the child;

18 D. the name and residence address of the parents,
19 guardian, custodian or spouse, if any, of the child; and if no
20 parent, guardian, custodian or spouse, if any, resides or can
21 be found within the state or if a residence address is unknown,
22 the name of any known adult relative residing within the state
23 or, if there be none, the known adult relative residing nearest
24 to the court;

25 E. whether the child is in custody or detention

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1 pursuant to the Delinquency Act and, if so, the place of
2 custody or detention [~~when alleging delinquency and the place~~
3 ~~of custody when alleging neglect, abuse or family in need of~~
4 ~~court-ordered services~~] and the time the child was taken into
5 custody;

6 F. whether the child is an Indian child; and

7 G. if any of the matters required to be set forth
8 by this section are not known, a statement of those matters and
9 the fact that they are not known. "

10 Section 7. Section 32A-1-13 NMSA 1978 (being Laws 1993,
11 Chapter 77, Section 22, as amended) is amended to read:

12 "32A-1-13. SUMMONS--SERVICE. --

13 A. If a party to be served with a summons can be
14 found within the state, the summons shall be served upon the
15 party as provided by the Rules of Civil Procedure for the
16 District Courts at least forty-eight hours before the hearing,
17 except that for a child party to [~~the~~] an action pursuant to
18 [~~Chapter 32A, Article 4 NMSA 1978~~] the Abuse and Neglect Act,
19 service shall be on the child's guardian ad litem or attorney
20 and not personally pursuant to children's court rule.

21 B. If a party to be served is within the state and
22 cannot be found but the party's address is known, service of
23 the summons may be made by mailing a copy of the summons to the
24 party by certified mail at least fifteen days before the
25 hearing.

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1 C. If after reasonable effort a party to be served
2 cannot be found, or address ascertained, within or without the
3 state, the court may order service of the summons by
4 publication in accordance with the provisions of Rule 1-004 of
5 the Rules of Civil Procedure for the District Courts, in which
6 event the hearing shall not be less than five days after the
7 date of last publication.

8 D. The court may authorize the payment from court
9 funds of the costs of service and of necessary travel expenses
10 incurred by persons summoned or otherwise required to appear at
11 the hearing. "

12 Section 8. Section 32A-1-14 NMSA 1978 (being Laws 1993,
13 Chapter 77, Section 23) is amended to read:

14 "32A-1-14. NOTICE TO INDIAN TRIBES. --

15 A. In a case involving a family in need of court-
16 ordered services, if the child is an Indian child, the Indian
17 child's tribe shall be notified when the petition is filed.
18 The form of the notice shall comply with the provisions of the
19 federal Indian Child Welfare Act of 1978.

20 B. In abuse, neglect or adoption proceedings, if
21 the child is an Indian child, the Indian child's tribe shall be
22 notified. The form of the notice shall comply with the
23 provisions of the federal Indian Child Welfare Act of 1978. "

24 Section 9. Section 32A-1-19 NMSA 1978 (being Laws 1993,
25 Chapter 77, Section 28) is amended to read:

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1 "32A-1-19. COURT COSTS AND EXPENSES. --

2 A. The following expenses shall be a charge upon
3 the funds of the court upon their certification by the court:

4 (1) reasonable compensation for services and
5 related expenses for counsel appointed by the court;

6 (2) reasonable compensation for services and
7 related expenses of a guardian ad litem or a child's attorney
8 appointed by the court; and

9 (3) the expenses of service of summonses,
10 notices, subpoenas, traveling expenses of witnesses and other
11 like expenses incurred in any proceeding under the Children's
12 Code.

13 B. The court may order the parent or other person
14 legally obligated to care for and support a child to pay all or
15 part of the costs and expenses pursuant to ~~[paragraph]~~
16 Subsection A of this section when:

17 (1) the child has been found to be a
18 delinquent child, a child of a family in need of court-ordered
19 services, an abused or neglected child or a ~~[mentally ill or~~
20 ~~developmentally disabled]~~ child with a mental illness or a
21 developmental disability;

22 (2) the parent or other person legally
23 obligated to care for and support a child is given notice and a
24 hearing to determine the parent or person's financial ability
25 to pay the costs and expenses; and

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1 (3) the court finds that the parent or person
2 is able to pay all or part of the costs and expenses.

3 Unless otherwise ordered, payment shall be made to the
4 court for remittance to those to whom compensation is due or,
5 if costs and expenses have been paid by the court, to the court
6 for remittance to the state. The court may prescribe the
7 manner of payment.

8 C. Whenever legal custody of an adjudicated child
9 is vested in someone other than the child's parents, including
10 an agency, institution or department of this state, if the
11 court, after notice to the parents or other persons legally
12 obligated to support the child and after a hearing, finds that
13 ~~[they]~~ the parents or other legally obligated persons are
14 financially able to pay all or part of the costs and expenses
15 of the support and treatment, the court may order the ~~[parent]~~
16 parents or other legally obligated ~~[person]~~ persons to pay to
17 the custodian in the manner the court directs a reasonable sum
18 that will cover all or part of the expenses of the support and
19 treatment of the child subsequent to the entry of the custody
20 order. The court may use the child support guidelines set
21 forth in Section 40-4-11.1 NMSA 1978 to calculate a reasonable
22 payment. If the ~~[parent]~~ parents or other legally obligated
23 ~~[person]~~ persons willfully ~~[fails or refuses]~~ fail or refuse to
24 pay the sum ordered, the court may proceed with contempt
25 charges and the order for payment may be filed and if filed

1 shall have the effect of a civil judgment. "

2 Section 10. A new section of the Children's Code General
3 Provisions Act is enacted to read:

4 "[NEW MATERIAL] CHILD'S ATTORNEY--POWERS AND DUTIES. --

5 A. An attorney shall represent a child in a
6 proceeding for which the attorney has been retained or
7 appointed. The attorney shall provide the same manner of legal
8 representation and be bound by the same duties to the child as
9 is due an adult client, in accordance with the rules of
10 professional conduct.

11 B. Unless excused by a court, an attorney appointed
12 to represent a child shall represent the child in any
13 subsequent appeals.

14 C. An attorney representing a child in a proceeding
15 pursuant to the Abuse and Neglect Act may retain separate
16 counsel to represent the child in a tort action on a
17 contingency fee basis or any other cause of action in
18 proceedings that are outside the jurisdiction of the children's
19 court. When a child's attorney retains separate counsel to
20 represent the child, the attorney shall provide the court with
21 written notice within ten days of retaining the separate
22 counsel. The child's attorney shall not retain or subsequently
23 obtain any pecuniary interest in an action filed on behalf of
24 the child outside of the jurisdiction of the children's court. "

25 Section 11. Section 32A-2-3 NMSA 1978 (being Laws 1993,
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1 Chapter 77, Section 32, as amended) is amended to read:

2 "32A-2-3. DEFINITIONS. -- As used in the Delinquency Act:

3 A. "delinquent act" means an act committed by a
4 child that would be designated as a crime under the law if
5 committed by an adult, including the following offenses:

6 (1) an offense pursuant to municipal traffic
7 codes or the Motor Vehicle Code:

8 (a) driving while under the influence of
9 intoxicating liquor or drugs;

10 (b) failure to stop in the event of an
11 accident causing death, personal injury or damage to property;

12 (c) unlawful taking of a vehicle or
13 motor vehicle;

14 (d) receiving or transferring of a
15 stolen vehicle or motor vehicle;

16 (e) homicide by vehicle;

17 (f) injuring or tampering with a
18 vehicle;

19 (g) altering or changing of an engine
20 number or other vehicle identification numbers;

21 (h) altering or forging of a driver's
22 license or permit or any making of a fictitious license or
23 permit;

24 (i) reckless driving;

25 (j) driving with a suspended or revoked

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1 license; or

2 (k) an offense punishable as a felony;

3 (2) buying, attempting to buy, receiving,
4 possessing or being served any alcoholic liquor or being
5 present in a licensed liquor establishment, other than a
6 restaurant or a licensed retail liquor establishment, except in
7 the presence of the child's parent, guardian, custodian or
8 adult spouse. As used in this paragraph, "restaurant" means an
9 establishment where meals are prepared and served primarily for
10 on-premises consumption and that has a dining room, a kitchen
11 and the employees necessary for preparing, cooking and serving
12 meals. "Restaurant" does not include an establishment, as
13 defined in regulations promulgated by the director of the
14 special investigations division of the department of public
15 safety, that serves only hamburgers, sandwiches, salads and
16 other fast foods;

17 ~~[(3) a felony violation of the provisions of~~
18 ~~Sections 17-1-1 through 17-5-9 NMSA 1978 or any regulations~~
19 ~~adopted by the state game commission that relate to the time,~~
20 ~~extent, means or manner that game animals, birds or fish may be~~
21 ~~hunted, taken, captured, killed, possessed, sold, purchased or~~
22 ~~shipped and for which a fine may be imposed or a civil damage~~
23 ~~awarded;~~

24 (4) (3) a violation of Section 30-29-2 NMSA
25 1978, regarding the illegal use of a glue, aerosol spray

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1 product or other chemical substance;

2 [~~(5)~~] (4) a violation of the Controlled
3 Substances Act;

4 [~~(6)~~] (5) escape from the custody of a law
5 enforcement officer or a juvenile probation or parole officer
6 or from any placement made by the department by a child who has
7 been adjudicated a delinquent child;

8 [~~(7)~~] (6) a violation of Section 30-15-1.1
9 NMSA 1978 regarding unauthorized graffiti on personal or real
10 property; or

11 [~~(8)~~] (7) a violation of an order of
12 protection issued pursuant to the provisions of the Family
13 Violence Protection Act;

14 B. "delinquent child" means a child who has
15 committed a delinquent act;

16 C. "delinquent offender" means a delinquent child
17 who is subject to juvenile sanctions only and who is not a
18 youthful offender or a serious youthful offender;

19 D. "detention facility" means a place where a child
20 may be detained under the Children's Code pending court hearing
21 and does not include a facility for the care and rehabilitation
22 of an adjudicated delinquent child;

23 E. "felony" means an act that would be a felony if
24 committed by an adult;

25 F. "misdemeanor" means an act that would be a

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1 misdemeanor or petty misdemeanor if committed by an adult;

2 G. "restitution" means financial reimbursement by
3 the child to the victim or community service imposed by the
4 court and is limited to easily ascertainable damages for injury
5 to or loss of property, actual expenses incurred for medical,
6 psychiatric and psychological treatment for injury to a person
7 and lost wages resulting from physical injury, which are a
8 direct and proximate result of a delinquent act. "Restitution"
9 does not include reimbursement for damages for mental anguish,
10 pain and suffering or other intangible losses. As used in this
11 subsection, "victim" means a person who is injured or suffers
12 damage of any kind by an act that is the subject of a complaint
13 or referral to law enforcement officers or juvenile probation
14 authorities. Nothing contained in this definition limits or
15 replaces the provisions of Subsections A and B of Section
16 32A-2-27 NMSA 1978;

17 H. "serious youthful offender" means an individual
18 fifteen to eighteen years of age who is charged with and
19 indicted or bound over for trial for first degree murder. A
20 "serious youthful offender" is not a delinquent child as
21 defined pursuant to the provisions of this section; and

22 I. "youthful offender" means a delinquent child
23 subject to adult or juvenile sanctions who is:

24 (1) fourteen to eighteen years of age at the
25 time of the offense and who is adjudicated for at least one of

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1 the following offenses:

2 (a) second degree murder, as provided in
3 Section 30-2-1 NMSA 1978;

4 (b) assault with intent to commit a
5 violent felony, as provided in Section 30-3-3 NMSA 1978;

6 (c) kidnapping, as provided in
7 Section 30-4-1 NMSA 1978;

8 (d) aggravated battery, as provided in
9 Subsection C of Section 30-3-5 NMSA 1978;

10 (e) aggravated battery against a
11 household member, as provided in Subsection C of Section
12 30-3-16 NMSA 1978;

13 [~~e~~] (f) aggravated battery upon a
14 peace officer, as provided in Subsection C of Section 30-22-25
15 NMSA 1978;

16 [~~f~~] (g) shooting at a dwelling or
17 occupied building or shooting at or from a motor vehicle, as
18 provided in Section 30-3-8 NMSA 1978;

19 [~~g~~] (h) dangerous use of explosives,
20 as provided in Section 30-7-5 NMSA 1978;

21 [~~h~~] (i) criminal sexual penetration,
22 as provided in Section 30-9-11 NMSA 1978;

23 [~~i~~] (j) robbery, as provided in
24 Section 30-16-2 NMSA 1978;

25 [~~j~~] (k) aggravated burglary, as

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1 provided in Section 30-16-4 NMSA 1978;

2 [~~(k)~~] (l) aggravated arson, as provided
3 in Section 30-17-6 NMSA 1978; or

4 [~~(l)~~] (m) abuse of a child that results
5 in great bodily harm or death to the child, as provided in
6 Section 30-6-1 NMSA 1978;

7 (2) fourteen to eighteen years of age at the
8 time of the offense and adjudicated for any felony offense and
9 who has had three prior, separate felony adjudications within a
10 three-year time period immediately preceding the instant
11 offense. The felony adjudications relied upon as prior
12 adjudications shall not have arisen out of the same transaction
13 or occurrence or series of events related in time and location.
14 Successful completion of consent decrees are not considered a
15 prior adjudication for the purposes of this paragraph; or

16 (3) fourteen years of age and adjudicated for
17 first degree murder, as provided in Section 30-2-1 NMSA 1978. "

18 Section 12. Section 32A-2-7 NMSA 1978 (being Laws 1993,
19 Chapter 77, Section 36) is amended to read:

20 "32A-2-7. COMPLAINTS--REFERRAL--PRELIMINARY INQUIRY--
21 NOTICE--TIME WAIVER.--

22 A. Complaints alleging delinquency shall be
23 referred to probation services, which shall conduct a
24 preliminary inquiry to determine the best interests of the
25 child and of the public with regard to any action to be taken.

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1 B. During the preliminary inquiry on a delinquency
2 complaint, the matter may be referred to another appropriate
3 agency and conferences may be conducted for the purpose of
4 effecting adjustments or agreements that will obviate the
5 necessity for filing a petition. At the commencement of the
6 preliminary inquiry, the parties shall be advised of their
7 basic rights pursuant to Section [~~32-2-14~~] 32A-2-14 NMSA 1978,
8 and no party may be compelled to appear at any conference, to
9 produce any papers or to visit any place. The child shall be
10 informed of the child's right to remain silent. The
11 preliminary inquiry shall be completed within the time limits
12 set forth in the Children's Court Rules [~~and Forms~~].

13 C. Prior to a preliminary inquiry being conducted
14 with a child who is detained, the child's parent, guardian or
15 custodian or the child's attorney shall be given reasonable
16 notice by the juvenile probation and parole officer and an
17 opportunity to be present at the preliminary inquiry. If a
18 child is not detained, the preliminary inquiry shall be
19 conducted within fourteen days of receipt of the referral from
20 law enforcement. Within one day of the completion of the
21 preliminary inquiry, the information contained therein shall be
22 forwarded to the children's court attorney.

23 [~~C.~~] D. When a child is in detention or custody and
24 the children's court attorney does not file a petition within
25 the time limits authorized by the Children's Court Rules [~~and~~

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1 ~~Forms~~], the child shall be released immediately. If a child is
2 not detained and a determination is made to file a petition,
3 the petition shall be filed within thirty days of completion of
4 the preliminary inquiry, unless a motion is granted to extend
5 the time limit for good cause shown.

6 ~~[D.]~~ E. After completion of the preliminary inquiry
7 on a delinquency complaint involving a misdemeanor, probation
8 services may notify the children's court attorney and recommend
9 an appropriate disposition for the case. If the child has been
10 referred for three or more prior misdemeanors within two years
11 of the instant offense, probation services shall notify the
12 children's court attorney and recommend an appropriate
13 disposition for the case.

14 ~~[E.]~~ F. Probation services shall notify the
15 children's court attorney of the receipt of any complaint
16 involving an act that constitutes a felony under the applicable
17 criminal law. Probation services shall also recommend a
18 disposition to the children's court attorney.

19 ~~[F.]~~ G. The child, through counsel, and the
20 children's court attorney may agree, without judicial approval,
21 to a waiver of time limitations imposed after a petition is
22 filed. A time waiver defers adjudication of the charges. The
23 children's court attorney may place restrictions on a child's
24 behavior as a condition of a time waiver. If the child
25 completes the agreed upon conditions and no new charges are

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1 filed against the child, the pending petition shall be
2 dismissed. If the children's court attorney files a new
3 petition against the child, the children's court attorney may
4 proceed on both the original petition and the new charges. The
5 department shall become a party if probation services are
6 requested as a condition of the time waiver."

7 Section 13. Section 32A-2-10 NMSA 1978 (being Laws 1993,
8 Chapter 77, Section 39, as amended) is amended to read:

9 "32A-2-10. RELEASE OR DELIVERY FROM CUSTODY. --

10 A. A person taking a child into custody shall, with
11 all reasonable speed:

12 (1) release the child to the child's parent,
13 guardian or custodian and issue verbal counsel or warning as
14 may be appropriate;

15 (2) release the child to the child's parent,
16 guardian or custodian upon their written promise to bring the
17 child before the court when requested by the court. If the
18 parent, guardian or custodian fails, when requested, to bring
19 the child before the court as promised, the court may order the
20 child taken into custody and brought before the court;

21 (3) deliver the child to a place of detention
22 as provided in Section 32A-2-12 NMSA 1978;

23 (4) deliver the child to a medical facility,
24 if available, if the child is believed to be suffering from a
25 serious illness that requires prompt treatment or prompt

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1 diagnosis; or

2 (5) deliver the child to an evaluation
3 facility, if available, if the person taking the child into
4 custody has reasonable grounds to believe the child presents a
5 likelihood of serious harm to himself or others or is suffering
6 from some other serious mental condition or illness that
7 requires prompt treatment or prompt diagnosis.

8 B. When an alleged delinquent child is delivered to
9 a place of detention as provided in Section 32A-2-12 NMSA 1978,
10 only a department employee or a trained county detention
11 professional designated by the department may place the child
12 in detention, in accordance with the criteria for detention set
13 forth in Section 32A-2-11 NMSA 1978. If the criteria for
14 detention of an alleged delinquent child are not met, the child
15 shall be released from custody.

16 C. A child under the age of eleven shall not be
17 held in detention. If a child under the age of eleven poses a
18 substantial risk of harm to himself or others, a peace officer
19 may detain and transport that child for emergency mental health
20 evaluation and care in accordance with Section 32A-6-11 NMSA
21 1978.

22 [~~C.~~] D. If a child is taken into custody and is not
23 released to the child's parent, guardian or custodian, the
24 person taking the child into custody shall give written notice
25 thereof as soon as possible, and in no case later than twenty-

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1 four hours, to the child's parent, guardian or custodian and to
2 the court, together with a statement of the reason for taking
3 the child into custody.

4 ~~[D-]~~ E. In all cases when a child is taken into
5 custody, the child shall be released to the child's parent,
6 guardian or custodian in accordance with the conditions and
7 time limits set forth in the Children's Court Rules. "

8 Section 14. Section 32A-2-12 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 41, as amended) is amended to read:

10 "32A-2-12. PLACEMENT OR DETENTION. --

11 A. A child alleged to be a delinquent child may be
12 placed or detained, pending a court hearing, in any of the
13 following places:

14 (1) a licensed foster home or a home otherwise
15 authorized under the law to provide foster or group care;

16 (2) a facility operated by a licensed child
17 welfare services agency;

18 (3) a shelter-care facility provided for in
19 the Children's Shelter Care Act or a detention facility
20 certified by the department for children alleged to be
21 delinquent children;

22 (4) any other suitable place, other than a
23 facility for the long-term care and rehabilitation of
24 delinquent children to which children adjudicated as delinquent
25 may be confined pursuant to Section 32A-2-19 NMSA 1978,

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1 designated by the court and which meets the standards for
2 detention facilities pursuant to the Children's Code and
3 federal law; or

4 (5) the child's home or place of residence,
5 under conditions and restrictions approved by the court.

6 B. A child alleged to be a youthful offender may be
7 detained, pending a court hearing, in any of the following
8 places:

9 (1) a detention facility, licensed by the
10 department, for children alleged to be delinquent children; or

11 (2) any other suitable place, other than a
12 facility for the long-term care and rehabilitation of
13 delinquent children to which children adjudicated as delinquent
14 children may be confined pursuant to Section 32A-2-19 NMSA
15 1978, designated by the court and that meets the standards for
16 detention facilities pursuant to the Children's Code and
17 federal law.

18 C. A child adjudicated as a youthful offender who
19 is violent toward staff or other residents in a detention
20 facility may be transferred and detained, pending a court
21 hearing, in a county jail. In the event that a child is
22 detained in a jail, the director of the jail shall presume that
23 the child is vulnerable to victimization by inmates within the
24 adult population because of his age, and shall take measures to
25 provide protection to the child. However, provision of

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1 protective measures shall not result in diminishing a child's
2 civil rights to less than those existing for an incarcerated
3 adult.

4 D. A child who has previously been incarcerated as
5 an adult or a person [~~older than~~] eighteen years of age or
6 older shall not be detained in a juvenile detention facility or
7 a facility for the long-term care and rehabilitation of
8 delinquent children, but may be detained in a county jail. In
9 the event that a child is detained in a jail, the director of
10 the jail shall presume that the child is vulnerable to
11 victimization by inmates within the adult population because of
12 his age, and shall take measures to provide protection to the
13 child. However, provision of protective measures shall not
14 result in diminishing a child's civil rights to less than those
15 existing for an incarcerated adult.

16 E. A child alleged to be a serious youthful
17 offender may be detained pending a court hearing in any of the
18 following places, prior to arraignment in metropolitan,
19 magistrate or district court:

20 (1) a detention facility, licensed by the
21 department, for children alleged to be delinquent children;

22 (2) any other suitable place, other than a
23 facility for the long-term care and rehabilitation of
24 delinquent children to which children adjudicated as delinquent
25 children may be confined pursuant to Section 32A-2-19 NMSA

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1 1978, designated by the court which meets the standards for
2 detention facilities pursuant to the Children's Code and
3 federal law; or

4 (3) a county jail, if a facility in Paragraph
5 (1) or (2) of this subsection is not appropriate. In the event
6 that a child is detained in a jail, the director of the jail
7 shall presume that the child is vulnerable to victimization by
8 inmates within the adult population because of his age and
9 shall take measures to provide protection to the child.

10 However, provision of protective measures shall not result in
11 diminishing a child's civil rights to less than those existing
12 for an incarcerated adult.

13 F. When a person who is eighteen years of age or
14 older is taken into custody and transported to an adult
15 facility on a juvenile warrant or an adult warrant or other
16 adult charges and an outstanding juvenile warrant exists,
17 notice shall be given to the children's court attorney and the
18 juvenile probation and parole office in the jurisdiction where
19 the juvenile warrant was issued within one day of the person
20 being taken into custody. The juvenile probation and parole
21 office shall give notice that the person has been taken into
22 custody to the children's court judge and the attorney who
23 represented the person in the juvenile proceeding."

24 Section 15. Section 32A-2-17 NMSA 1978 (being Laws 1993,
25 Chapter 77, Section 46, as amended) is amended to read:

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1 "32A-2-17. PREDISPOSITION STUDIES--REPORTS AND
2 EXAMINATIONS. --

3 A. After a petition has been filed and either a
4 finding with respect to the allegations of the petition has
5 been made or a notice of intent to admit the allegations of the
6 petition has been filed, the court may direct that a
7 predisposition study and report to the court be made in writing
8 by the department or an appropriate agency designated by the
9 court concerning the child, the family of the child, the
10 environment of the child and any other matters relevant to the
11 need for treatment or to appropriate disposition of the case.
12 The following predisposition reports shall be provided to the
13 parties and the court five days before actual disposition or
14 sentencing:

15 (1) the adult probation and parole division of
16 the corrections department shall prepare a predisposition
17 report for a serious youthful [offenders] offender;

18 (2) the department shall prepare a
19 predisposition report for a serious youthful [offenders]
20 offender who ~~[are]~~ is convicted of an offense other than first
21 degree murder;

22 (3) the department shall prepare a
23 predisposition report for a youthful [offenders] offender
24 concerning the youthful offender's amenability to treatment and
25 if:

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1 (a) the court determines that a juvenile
2 disposition is appropriate, the department shall prepare a
3 subsequent predisposition report; or

4 (b) the court makes the findings
5 necessary to impose an adult sentence pursuant to Section
6 32A-2-20 NMSA 1978, the adult probation and parole division of
7 the corrections department shall prepare a subsequent
8 predisposition report; and

9 (4) the department shall prepare a
10 predisposition report for a delinquent [~~offenders~~] offender,
11 upon the court's request.

12 B. Where there are indications that the child may
13 [~~be mentally disordered or developmentally disabled~~] have a
14 mental disorder or developmental disability, the court, on
15 motion by the children's court attorney or that of counsel for
16 the child, may order the child to be examined at a suitable
17 place by a physician, a licensed psychologist or a licensed
18 independent social worker prior to a hearing on the merits of
19 the petition. An examination made prior to the hearing or as a
20 part of the predisposition study and report shall be conducted
21 on an outpatient basis, unless the court finds that placement
22 in a hospital or other appropriate facility is necessary.

23 C. The court, after a hearing, may order
24 examination by a physician, a licensed psychologist or a
25 licensed independent social worker of a parent or custodian

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1 whose ability to care for or supervise a child is an issue
2 before the court.

3 D. The court may order that a child adjudicated as
4 a delinquent child be transferred to the facility designated by
5 the secretary of the department for a period of not more than
6 fifteen days within a three hundred sixty-five day time period
7 for purposes of diagnosis, with direction that the court be
8 given a report indicating what disposition appears most
9 suitable when the interests of the child and the public are
10 considered.

11 E. Once the child is committed, the department
12 shall determine when the child is released. The release shall
13 be any time after commitment, but not more than fifteen days
14 after commitment. Upon petition by the department to the
15 court, the judge may extend the commitment for an additional
16 fifteen days upon good cause shown. "

17 Section 16. Section 32A-2-19 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 48, as amended by Laws 2003, Chapter 225,
19 Section 10 and by Laws 2003, Chapter 239, Section 5) is amended
20 to read:

21 "32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT
22 OFFENDER. --

23 A. At the conclusion of the dispositional hearing,
24 the court may make and include in the dispositional judgment
25 its findings on the following:

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1 (1) the interaction and interrelationship of
2 the child with the child's parents, siblings and any other
3 person who may significantly affect the child's best interests;

4 (2) the child's adjustment to his home, school
5 and community;

6 (3) the mental and physical health of all
7 individuals involved;

8 (4) the wishes of the child as to his
9 custodian;

10 (5) the wishes of the child's parents as to
11 the child's custody;

12 (6) whether there exists a relative of the
13 child or other individual who, after study by the department,
14 is found to be qualified to receive and care for the child;

15 (7) the availability of services recommended
16 in the predisposition report; and

17 (8) the ability of the parents to care for the
18 child in the home.

19 B. If a child is found to be delinquent, the court
20 may impose a fine not to exceed the fine that could be imposed
21 if the child were an adult and may enter its judgment making
22 any of the following dispositions for the supervision, care and
23 rehabilitation of the child:

24 [~~(1) any disposition that is authorized for~~
25 ~~the disposition of a neglected or abused child, in accordance~~

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1 ~~with the Abuse and Neglect Act;~~

2 (2)] (1) transfer legal custody to the
3 department, an agency responsible for the care and
4 rehabilitation of delinquent children, which shall receive the
5 child at a facility designated by the secretary of the
6 department as a juvenile reception facility. The department
7 shall thereafter determine the appropriate placement,
8 supervision and rehabilitation program for the child. The
9 judge may include recommendations for placement of the child.
10 Commitments are subject to limitations and modifications set
11 forth in Section 32A-2-23 NMSA 1978. The types of commitments
12 include:

13 (a) a short-term commitment of no more
14 than one year in a facility for the care and rehabilitation of
15 adjudicated delinquent children. No more than nine months
16 shall be served at the facility and no less than ninety days
17 shall be served on parole, unless: 1) a petition to extend the
18 commitment has been filed prior to the commencement of parole;
19 2) the commitment has been extended pursuant to Section
20 32A-2-23 NMSA 1978; or 3) parole is revoked pursuant to Section
21 32A-2-25 NMSA 1978;

22 (b) a long-term commitment for no more
23 than two years in a [~~long-term~~] facility for the care and
24 rehabilitation of adjudicated delinquent children. No more
25 than twenty-one months shall be served at the facility and no

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1 less than ninety days shall be served on parole, unless: 1)
2 parole is revoked pursuant to Section 32A-2-25 NMSA 1978; or 2)
3 the commitment is extended pursuant to Section 32A-2-23 NMSA
4 1978;

5 (c) if the child is a delinquent
6 offender who committed one of the criminal offenses set forth
7 in Subsection I of Section 32A-2-3 NMSA 1978, a commitment to
8 age twenty-one, unless sooner discharged; or

9 (d) if the child is a youthful offender,
10 a commitment to age twenty-one, unless sooner discharged;

11 [~~3~~] (2) place the child on probation under
12 those conditions and limitations as the court may prescribe;

13 [~~4~~] (3) place the child in a local detention
14 facility that has been certified in accordance with the
15 provisions of Section 32A-2-4 NMSA 1978 for a period not to
16 exceed fifteen days within a three hundred sixty-five day time
17 period; or

18 [~~5~~] if a child is found to be delinquent
19 solely on the basis of Paragraph (3) of Subsection A of Section
20 32A-2-3 NMSA 1978, the court shall only enter a judgment
21 placing the child on probation or ordering restitution or
22 imposing a fine not to exceed the fine that could be imposed if
23 the child were an adult or any combination of these
24 dispositions; or

25 [~~6~~] (4) if a child is found to be delinquent

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1 solely on the basis of Paragraph (2), [~~(4) or (5)~~] (3) or (4)
2 of Subsection A of Section 32A-2-3 NMSA 1978, the court may
3 make any disposition provided by this section and may enter its
4 judgment placing the child on probation and, as a condition of
5 probation, transfer custody of the child to the department for
6 a period not to exceed six months without further order of the
7 court; provided that this transfer shall not be made unless the
8 court first determines that the department is able to provide
9 or contract for adequate and appropriate treatment for the
10 child and that the treatment is likely to be beneficial.

11 C. When the child is an Indian child, the Indian
12 child's cultural needs shall be considered in the dispositional
13 judgment and reasonable access to cultural practices and
14 traditional treatment shall be provided.

15 D. [~~No~~] A child found to be delinquent shall not be
16 committed or transferred to a penal institution or other
17 facility used for the execution of sentences of persons
18 convicted of crimes.

19 E. Whenever the court vests legal custody in an
20 agency, institution or department, it shall transmit with the
21 dispositional judgment copies of the clinical reports,
22 predisposition study and report and other information it has
23 pertinent to the care and treatment of the child.

24 F. Prior to any child being placed in the custody
25 of the department, the department shall be provided with

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1 reasonable oral or written notification and an opportunity to
2 be heard.

3 G. In addition to any other disposition pursuant to
4 Subsection B of this section, the court may make an abuse or
5 neglect report for investigation and proceedings as provided
6 for in the Abuse and Neglect Act. The report may be made to a
7 local law enforcement agency, the department or a tribal law
8 enforcement or social service agency for an Indian child
9 residing in Indian country.

10 [~~G.~~] H. In addition to any other disposition
11 pursuant to this section or any other penalty provided by law,
12 if a child fifteen years of age or older is adjudicated
13 delinquent on the basis of Paragraph (2), [~~(4) or (5)~~] (3) or
14 (4) of Subsection A of Section 32A-2-3 NMSA 1978, the child's
15 driving privileges may be denied or the child's driver's
16 license may be revoked for a period of ninety days. For a
17 second or a subsequent adjudication, the child's driving
18 privileges may be denied or the child's driver's license
19 revoked for a period of one year. Within twenty-four hours of
20 the dispositional judgment, the court may send to the motor
21 vehicle division of the taxation and revenue department the
22 order adjudicating delinquency. Upon receipt of an order from
23 the court adjudicating delinquency, the director of the motor
24 vehicle division of the taxation and revenue department may
25 revoke or deny the delinquent's driver's license or driving

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1 privileges. Nothing in this section may prohibit the
2 delinquent from applying for a limited driving privilege
3 pursuant to Section 66-5-35 NMSA 1978 or an ignition interlock
4 license pursuant to the Ignition Interlock Licensing Act, and
5 nothing in this section precludes the delinquent's
6 participation in an appropriate educational, counseling or
7 rehabilitation program.

8 [H-] I. In addition to any other disposition
9 pursuant to this section or any other penalty provided by law,
10 when a child is adjudicated delinquent on the basis of
11 Paragraph [~~(7)~~] (6) of Subsection A of Section 32A-2-3 NMSA
12 1978, the child shall perform the mandatory community service
13 set forth in Section 30-15-1.1 NMSA 1978. When a child fails
14 to completely perform the mandatory community service, the name
15 and address of the child's parent or legal guardian shall be
16 published in a newspaper of general circulation, accompanied by
17 a notice that he is the parent or legal guardian of a child
18 adjudicated delinquent for committing graffiti."

19 Section 17. Section 32A-2-20 NMSA 1978 (being Laws 1993,
20 Chapter 77, Section 49, as amended) is amended to read:

21 "32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER. --

22 A. The court has the discretion to invoke either an
23 adult sentence or juvenile sanctions on a youthful offender.
24 The children's court attorney shall file a notice of intent to
25 invoke an adult sentence within ten working days of the filing

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1 of the petition, provided that the court may extend the time
2 for filing of the notice of intent to invoke an adult sentence,
3 for good cause shown, prior to the adjudicatory hearing. A
4 preliminary hearing by the court or a hearing before a grand
5 jury shall be held, within ten days after the filing of the
6 intent to invoke an adult sentence, to determine whether
7 probable cause exists to support the allegations contained in
8 the petition.

9 B. If the children's court attorney has filed a
10 notice of intent to invoke an adult sentence and the child is
11 adjudicated as a youthful offender, the court shall make the
12 following findings in order to invoke an adult sentence:

13 (1) the child is not amenable to treatment or
14 rehabilitation as a child in available facilities; and

15 (2) the child is not eligible for commitment
16 to an institution for [~~the developmentally disabled or mentally~~
17 ~~disordered~~] children with developmental disabilities or mental
18 disorders.

19 C. In making the findings set forth in Subsection B
20 of this section, the judge shall consider the following
21 factors:

22 (1) the seriousness of the alleged offense;

23 (2) whether the alleged offense was committed
24 in an aggressive, violent, premeditated or willful manner;

25 (3) whether a firearm was used to commit the

1 alleged offense;

2 (4) whether the alleged offense was against
3 persons or against property, greater weight being given to
4 offenses against persons, especially if personal injury
5 resulted;

6 (5) the sophistication and maturity of the
7 child as determined by consideration of the child's home,
8 environmental situation, emotional attitude and pattern of
9 living;

10 (6) the record and previous history of the
11 child;

12 (7) the prospects for adequate protection of
13 the public and the likelihood of reasonable rehabilitation of
14 the child by the use of procedures, services and facilities
15 currently available; and

16 (8) any other relevant factor, provided that
17 factor is stated on the record.

18 D. If a child has previously been sentenced as an
19 adult pursuant to the provisions of this section, there shall
20 be a rebuttable presumption that the child is not amenable to
21 treatment or rehabilitation as a child in available facilities.

22 E. If the court invokes an adult sentence, the
23 court may sentence the child to less than, but shall not
24 exceed, the mandatory adult sentence. A youthful offender
25 given an adult sentence shall be treated as an adult offender

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1 and shall be transferred to the legal custody of an agency
2 responsible for incarceration of persons sentenced to adult
3 sentences. This transfer terminates the jurisdiction of the
4 court over the child with respect to the delinquent acts
5 alleged in the petition.

6 F. If a juvenile disposition is appropriate, the
7 court shall follow the provisions set forth in Section 32A-2-19
8 NMSA 1978. A youthful offender may be subject to extended
9 commitment in the care of the department until the age of
10 twenty-one, pursuant to the provisions of Section 32A-2-23 NMSA
11 1978.

12 G. A child fourteen [~~to eighteen year old child~~]
13 years of age or older, charged with first degree murder, but
14 [~~convicted of an offense less than first degree murder~~] found
15 to have committed a youthful offender offense as set forth in
16 Subsection I of Section 32A-2-3 NMSA 1978, is subject to the
17 dispositions set forth in this section.

18 H. A child fourteen years of age or older charged
19 with first degree murder, but found to have committed a
20 delinquent act that is neither first degree murder nor a
21 youthful offender offense as set forth in Subsection I of
22 Section 32A-2-3 NMSA 1978, shall be adjudicated as a delinquent
23 subject to the dispositions set forth in Section 32A-2-19 NMSA
24 1978."

25 Section 18. Section 32A-2-21 NMSA 1978 (being Laws 1993,
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1 Chapter 77, Section 50, as amended) is amended to read:

2 "32A-2-21. DISPOSITION OF A [~~MENTALLY DISORDERED OR~~
3 ~~DEVELOPMENTALLY DISABLED~~] CHILD WITH A MENTAL DISORDER OR
4 DEVELOPMENTAL DISABILITY IN A DELINQUENCY PROCEEDING. --

5 A. If in a hearing at any stage of a proceeding on
6 a delinquency petition the evidence indicates that the child
7 [~~is~~] has or may [~~be developmentally disabled or mentally~~
8 ~~disordered~~] have a mental disorder or developmental disability,
9 the court may:

10 (1) order the child detained if appropriate
11 under the criteria established pursuant to the provisions of
12 the Delinquency Act; and

13 (2) initiate proceedings for the involuntary
14 placement of the child as a [~~mentally disordered or~~
15 ~~developmentally disabled~~] minor with a mental disorder or
16 developmental disability pursuant to the provisions of the
17 Children's Mental Health and Developmental Disabilities Act.

18 B. If the child is placed for residential treatment
19 or habilitation pursuant to the Children's Mental Health and
20 Developmental Disabilities Act, the department shall retain
21 legal custody during the period of involuntary placement or
22 until further order of the court.

23 C. If a child is committed to a psychiatric
24 hospital for treatment or habilitation and in the event that
25 the department should be required to pay more than four hundred

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1 dollars (\$400) per day because of the individualized treatment
2 plan, the annual costs over four hundred dollars (\$400) per
3 child per day will be reported annually by the department to
4 the legislative finance committee.

5 D. The child may remain in the residential
6 treatment or habilitation facility pending the disposition of
7 the delinquency petition.

8 E. When a child in departmental custody needs
9 involuntary placement for residential mental health or
10 developmental disability services as a result of a mental
11 disorder or developmental disability, the department shall
12 request the children's court attorney to petition for that
13 child's placement pursuant to the provisions of the Children's
14 Mental Health and Developmental Disabilities Act.

15 F. A child subject to the provisions of the
16 Delinquency Act who receives treatment in a residential
17 treatment or habilitation program shall enjoy all the
18 substantive and procedural rights set forth in the Children's
19 Mental Health and Developmental Disabilities Act.

20 G. A child's competency to stand trial or
21 participate in his own defense may be raised by ~~[any]~~ a party
22 at any time during a proceeding. If the child has been accused
23 of an act that would be considered a misdemeanor if the child
24 were an adult and the child is found to be incompetent to stand
25 trial, the court shall dismiss the petition with prejudice and

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1 may recommend that the children's court attorney initiate
2 proceedings pursuant to the provisions of the Children's Mental
3 Health and Developmental Disabilities Act. In all other cases,
4 the court shall stay the proceedings until the child is
5 competent to stand trial; provided that a petition shall not be
6 stayed for more than one year. The court may order treatment
7 to enable the child to attain competency to stand trial and may
8 amend the conditions of release pursuant to Sections 32A-2-11
9 and 32A-2-13 NMSA 1978. The child's competency to stand trial
10 shall be reviewed every ninety days for up to one year. The
11 court shall dismiss the petition without prejudice if, at any
12 time during the year, the court finds that a child cannot be
13 treated to competency or if, after one year, the court
14 determines that a child is incompetent to stand trial or
15 participate in his own defense [the court may dismiss the
16 petition without prejudice and]. Upon dismissal, the court may
17 recommend that the children's court attorney initiate
18 proceedings pursuant to the provisions of the Children's Mental
19 Health and Developmental Disabilities Act.

20 H. Involuntary residential treatment shall only
21 occur pursuant to the provisions of the Children's Mental
22 Health and Developmental Disabilities Act."

23 Section 19. Section 32A-2-22 NMSA 1978 (being Laws 1993,
24 Chapter 77, Section 51, as amended) is amended to read:

25 "32A-2-22. CONTINUANCE UNDER SUPERVISION WITHOUT

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1 JUDGMENT-- CONSENT DECREE-- DISPOSITION. --

2 A. At any time after the filing of a delinquency
3 petition and before the entry of a judgment, the court may, on
4 motion of the children's court attorney or that of counsel for
5 the child, suspend the proceedings and continue the child under
6 supervision in the child's own home under terms and conditions
7 negotiated with probation services and agreed to by all the
8 parties affected. The court's order continuing the child under
9 supervision under this section shall be known as a "consent
10 decree". An admission of some or all of the allegations stated
11 in the delinquency petition shall not be required for a consent
12 decree order.

13 B. If the child objects to a consent decree, the
14 court shall proceed to findings, adjudication and disposition
15 of the case. If the child does not object but an objection is
16 made by the children's court attorney after consultation with
17 probation services, the court shall, after considering the
18 objections and the reasons given, proceed to determine whether
19 it is appropriate to enter a consent decree and may, in its
20 discretion, enter the consent decree.

21 C. A consent decree shall remain in force for six
22 months unless the child is discharged sooner by probation
23 services. Prior to the expiration of the six-month period and
24 upon the application of probation services or any other agency
25 supervising the child under a consent decree, the court may

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1 extend the decree for an additional six months in the absence
2 of objection to extension by the child. If the child objects
3 to the extension, the court shall hold a hearing and make a
4 determination on the issue of extension.

5 D. If either prior to discharge by probation
6 services or expiration of the consent decree the child
7 allegedly fails to fulfill the terms of the decree, the
8 children's court attorney may file a petition to revoke the
9 consent decree. Proceedings on the petition shall be conducted
10 in the same manner as proceedings on petitions to revoke
11 probation. If the child is found to have violated the terms of
12 the consent decree, the court may:

13 (1) extend the period of the consent decree;
14 or

15 (2) make any other disposition that would have
16 been appropriate in the original proceeding.

17 E. A child who is discharged by probation services
18 or who completes a period under supervision without
19 reinstatement of the original delinquency petition shall not
20 again be proceeded against in any court for the same offense
21 alleged in the petition or an offense based upon the same
22 conduct and the original petition shall be dismissed with
23 prejudice. Nothing in this subsection precludes a civil suit
24 against the child for damages arising from the child's conduct.

25 F. A judge who pursuant to this section elicits or

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1 examines information or material about a child that would be
2 inadmissible in a hearing on the allegations of the petition
3 shall not, over the objection of the child, participate in any
4 subsequent proceedings on the delinquency if:

5 (1) a consent decree is denied and the
6 allegations in the petition remain to be decided in a hearing
7 where the child denies the allegations; or

8 (2) a consent decree is granted but the
9 delinquency petition is subsequently reinstated.

10 G. If a consent decree has been entered pursuant to
11 the filing of a delinquency petition based on Paragraph (2),
12 [~~(4) or (5)~~] (3) or (4) of Subsection A of Section 32A-2-3 NMSA
13 1978 for a child who is fifteen years of age or older, a
14 condition of the consent decree agreement may be the denial of
15 the child's driving privileges or the revocation of the child's
16 driver's license for a period of ninety days. For the second
17 or subsequent adjudication, the child's driving privileges may
18 be denied or the child's driver's license revoked for a period
19 of one year. Within twenty-four hours of the entry by the
20 court of a decree consenting to the revocation or denial of the
21 child's driver's license or driving privileges, the court shall
22 send the decree to the motor vehicle division of the taxation
23 and revenue department. Upon receipt of the decree from the
24 court consenting to the denial or revocation of the child's
25 driving privileges or driver's license, the director of the

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1 motor vehicle division of the taxation and revenue department
2 shall revoke or deny the delinquent child's driver's license or
3 driving privileges. Nothing in this section shall prohibit the
4 delinquent child from applying for a limited driving privilege
5 pursuant to Section 66-5-35 NMSA 1978 or an ignition interlock
6 license pursuant to the Ignition Interlock Licensing Act, and
7 nothing in this section precludes the delinquent child's
8 participation in an appropriate educational, counseling or
9 rehabilitation program.

10 ~~[H. The court shall not order more than one consent~~
11 ~~decree for a child within a two-year period.]"~~

12 Section 20. Section 32A-2-23 NMSA 1978 (being Laws 1993,
13 Chapter 77, Section 52, as amended) is amended to read:

14 "32A-2-23. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--
15 MODIFICATION--TERMINATION OR EXTENSION OF COURT ORDERS.--

16 A. A judgment transferring legal custody of an
17 adjudicated delinquent child to an agency responsible for the
18 care and rehabilitation of delinquent children divests the
19 court of jurisdiction at the time of transfer of custody,
20 unless the transfer of legal custody is for a commitment not
21 exceeding fifteen days pursuant to the provisions of
22 Section 32A-2-19 NMSA 1978, in which case the court retains
23 jurisdiction, and:

24 (1) the juvenile parole board pursuant to the
25 Juvenile Parole Board Act has the exclusive power to parole or

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1 release the child, subject to the provisions of Section 32A-7-8
2 NMSA 1978;

3 (2) the supervision of a child after release
4 under Paragraph (1) of this subsection shall be conducted by
5 the department; and

6 [~~(3) a child who completes a short-term~~
7 ~~commitment of one year, upon his release shall be placed on~~
8 ~~parole and supervised by the department for a period of ninety~~
9 ~~days; and~~

10 ~~(4)]~~ (3) the period of time a child absconds
11 from parole or probation supervision shall toll all time limits
12 for the requirement of filing a petition to revoke probation or
13 parole and shall toll the computation of the period of
14 probation or parole supervision pursuant to the provisions of
15 the Delinquency Act.

16 B. A judgment of probation or protective
17 supervision shall remain in force for an indeterminate period
18 not to exceed the term of commitment from the date entered.

19 C. A child shall be released by an agency and
20 probation or supervision shall be terminated by juvenile
21 probation and parole services or the agency providing
22 supervision when it appears that the purpose of the order has
23 been achieved before the expiration of the period of the
24 judgment. A release or termination and the reasons therefor
25 shall be reported promptly to the court in writing by the

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1 releasing authority.

2 D. Prior to the expiration of a short-term
3 commitment of one year, as provided for in Section 32A-2-19
4 NMSA 1978, the court may extend the judgment for up to one six-
5 month period if the court finds that the extension is necessary
6 to safeguard the welfare of the child or the public safety. If
7 a short-term commitment is extended, the mandatory ninety-day
8 parole, as required by Section 32A-2-19 NMSA 1978, shall be
9 included in the extension. Notice and hearing are required for
10 any extension of a juvenile's commitment.

11 [~~D.~~] E. Prior to the expiration of a long-term
12 commitment, as provided for in Section 32A-2-19 NMSA 1978, the
13 court may extend the judgment for additional periods of one
14 year until the child reaches the age of twenty-one if the court
15 finds that the extension is necessary to safeguard the welfare
16 of the child or the public [~~interest~~] safety. If a long-term
17 commitment is extended, the mandatory ninety-day parole, as
18 required by Section 32A-2-19 NMSA 1978, shall be included in
19 the extension. Notice and hearing are required for any
20 extension of a juvenile's commitment.

21 [~~E.~~] F. Prior to the expiration of a judgment of
22 probation, the court may extend the judgment for an additional
23 period of one year until the child reaches the age of twenty-
24 one if the court finds that the extension is necessary to
25 protect the community or to safeguard the welfare of the child.

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1 ~~[F-]~~ G. The court may dismiss a motion if it finds
2 after preliminary investigation that the motion is without
3 substance. If the court is of the opinion that the matter
4 should be reviewed, it may, upon notice to all necessary
5 parties, proceed to a hearing in the manner provided for
6 hearings on petitions alleging delinquency. The court may
7 terminate a judgment if it finds that the child is no longer in
8 need of care, supervision or rehabilitation or it may enter a
9 judgment extending or modifying the original judgment if it
10 finds that action necessary to safeguard the child or the
11 public interest.

12 ~~[G-]~~ H. A child may make a motion to modify a
13 children's court or adult disposition within thirty days of the
14 judge's decision. If the court is of the opinion that the
15 matter should be reviewed, it may, upon notice to all necessary
16 parties, proceed to a hearing in the manner provided for
17 hearings on petitions alleging delinquency. "

18 Section 21. Section 32A-2-25 NMSA 1978 (being Laws 1993,
19 Chapter 77, Section 54) is amended to read:

20 "32A-2-25. PAROLE REVOCATION--PROCEDURES. --

21 A. A child on parole from an agency that has legal
22 custody who violates a term of parole may be proceeded against
23 in a parole revocation proceeding conducted by the department
24 or the supervising agency or by a hearing officer contracted by
25 the department who is neutral to the child and the agency in

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1 accordance with procedures established by the department in
2 cooperation with the juvenile parole board. A juvenile
3 probation and parole officer may detain a child on parole
4 status who is alleged to have violated a term or condition of
5 parole until the completion and review of a preliminary parole
6 revocation hearing. A child may waive the right to a
7 preliminary parole revocation hearing after consultation with
8 the child's attorney, parent, guardian or custodian.

9 B. If a retake warrant is issued by the department
10 upon the completion of the preliminary parole revocation
11 hearing, the juvenile institution to which the warrant is
12 issued shall promptly transport the child to that institution
13 at the expense of the department. If a child absconds from
14 parole supervision and is apprehended in another state after
15 the issuance of a retake warrant by the department, the
16 juvenile justice [~~services~~] division of the department shall
17 cause the return of the child to this state at the expense of
18 the department."

19 Section 22. Section 32A-2-27 NMSA 1978 (being Laws 1993,
20 Chapter 77, Section 56) is amended to read:

21 "32A-2-27. INJURY TO PERSON OR DESTRUCTION OF PROPERTY--
22 LIABILITY-- COSTS AND [~~ATTORNEYS'~~] ATTORNEY FEES-- RESTITUTION.--

23 A. Any person may recover damages not to exceed
24 four thousand dollars (\$4,000) in a civil action in a court or
25 tribunal of competent jurisdiction from the parent or guardian

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1 [or-custodian] having custody and control of a child when the
2 child has maliciously or willfully injured a person or damaged,
3 destroyed or deprived use of property, real or personal,
4 belonging to the person bringing the action.

5 B. Recovery of damages under this section is
6 limited to the actual damages proved in the action, not to
7 exceed four thousand dollars (\$4,000) taxable court costs and,
8 in the discretion of the court, reasonable [attorneys']
9 attorney fees to be fixed by the court or tribunal.

10 C. Nothing contained in this section limits the
11 discretion of the court to issue an order requiring damages or
12 restitution to be paid by the child when the child has been
13 found to be within the provisions of the Delinquency Act.

14 D. Nothing contained in this section shall be
15 construed so as to impute liability to any foster parent."

16 Section 23. Section 32A-2-30 NMSA 1978 (being Laws 1993,
17 Chapter 77, Section 59) is amended to read:

18 "32A-2-30. INDIGENCY STANDARD-- FEE SCHEDULE--
19 REIMBURSEMENT.--

20 A. The court shall use a standard adopted and
21 information provided by the public defender department to
22 determine indigency of children in proceedings on petitions
23 alleging delinquency.

24 B. The court shall use a fee schedule adopted by
25 the public defender department when appointing attorneys to

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1 represent children in proceedings on petitions alleging
2 delinquency.

3 C. The court shall order reimbursement from the
4 parents or guardians [~~or custodians~~] of a child who has
5 received or desires to receive legal representation or another
6 benefit under the Public Defender Act after a determination is
7 made that the child was not indigent according to the standard
8 for indigency of children adopted by the public defender
9 department.

10 D. Any amounts recovered pursuant to this section
11 shall be paid to the state treasurer for credit to the general
12 fund. "

13 Section 24. Section 32A-2-32 NMSA 1978 (being Laws 1993,
14 Chapter 77, Section 61, as amended) is amended to read:

15 "32A-2-32. CONFIDENTIALITY--RECORDS. --

16 A. All social records pertaining to the child,
17 including all related diagnostic [evaluation] evaluations,
18 psychiatric reports, medical reports, social studies reports,
19 records from local detention facilities, client-identifying
20 records from facilities for the care and rehabilitation of
21 delinquent children, pre-parole reports and supervision
22 histories obtained by the juvenile probation office, parole
23 officers and parole board or in possession of the department,
24 are [~~privileged~~] confidential and shall not be disclosed
25 directly or indirectly to the public.

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1 B. The records described in Subsection A of this
2 section shall be ~~[open to inspection only by]~~ disclosed only
3 to:
4 (1) court personnel;
5 (2) court appointed special advocates;
6 (3) the child's attorney or guardian ad litem;
7 (4) department personnel;
8 (5) any local substitute care review board or
9 any agency contracted to implement local substitute care review
10 boards;
11 (6) corrections department personnel;
12 (7) law enforcement officials;
13 (8) district attorneys;
14 (9) any state government social services
15 agency in any state;
16 (10) those persons or entities of a child's
17 Indian tribe specifically authorized to inspect such records
18 pursuant to the federal Indian Child Welfare Act of 1978 or any
19 regulations promulgated thereunder;
20 (11) tribal juvenile justice system and social
21 service representatives;
22 (12) a foster parent, if the records are those
23 of a child currently placed with that foster parent or of a
24 child being considered for placement with that foster parent
25 when the ~~[records concern the social, medical, psychological or~~

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1 ~~educational needs]~~ disclosure of the information is necessary
2 for the child's treatment or care and shall include only that
3 information necessary to provide for treatment and care of the
4 child;

5 (13) school personnel involved with the child
6 if the records concern the child's ~~[social or]~~ educational
7 needs as necessary for the child's educational planning and
8 shall include only that information necessary to provide for
9 the child's educational needs;

10 (14) health care or mental health
11 professionals involved in the evaluation or treatment of the
12 child, the child's parents, guardians or custodian or other
13 family members;

14 (15) representatives of the protection and
15 advocacy system; ~~[pursuant to the provisions of the federal~~
16 ~~Developmental Disabilities Assistance and Bill of Rights Act~~
17 ~~and the federal Protection and Advocacy for Mentally Ill~~
18 ~~Individuals Amendments Act of 1991; and]~~

19 (16) the child's parent, guardian or legal
20 custodian when the disclosure of the information is necessary
21 for the child's treatment or care and shall include only that
22 information necessary to provide for the treatment or care of
23 the child; and

24 ~~[(16)]~~ (17) any other person or entity, by
25 order of the court, having a legitimate interest in the case or

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1 the work of the court.

2 C. Whoever intentionally and unlawfully releases
3 any information or records closed to the public pursuant to
4 this section or releases or makes other unlawful use of records
5 in violation of this section is guilty of a petty misdemeanor.

6 D. The department shall promulgate rules for
7 implementing disclosure of records pursuant to this section and
8 in compliance with state and federal law and the Children's
9 Court Rules. "

10 Section 25. Section 32A-3A-1 NMSA 1978 (being Laws 1993,
11 Chapter 77, Section 63) is amended to read:

12 "32A-3A-1. SHORT TITLE--PURPOSE. --

13 A. Chapter [~~32~~] 32A, Article 3A NMSA 1978 may be
14 cited as the "Family Services Act".

15 B. The Family Services Act shall be interpreted and
16 construed to effectuate the following expressed legislative
17 purposes:

18 [~~A.-~~] (1) to recognize that many instances of
19 [~~truancy and running away on the part of a child~~] a child's
20 behavior are symptomatic of a family in need of family services
21 [~~and in some situations results in the inability of the parent~~
22 ~~and child to share a residence~~]; and

23 [~~B.-~~] (2) to provide [~~early~~] prevention,
24 diversion and intervention [~~and~~] services for a child or family
25 [~~in need of services in order to forestall the breakdown of the~~

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1 ~~family unit and to avoid the need for court intervention]. "~~

2 Section 26. Section 32A-3A-2 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 64) is amended to read:

4 "32A-3A-2. DEFINITIONS.--As used in the Family [~~in Need~~
5 ~~of~~] Services Act:

6 A. "child or family in need of family services"
7 means:

8 (1) a family whose [~~child, subject to~~
9 ~~compulsory school attendance, is absent from school without~~
10 ~~authorized excuse more than ten days during a school semester]~~
11 child's behavior endangers the child's health, safety,
12 education or well-being;

13 (2) a family whose child is absent from the
14 child's place of residence for twenty-four hours or more
15 without the consent of the parent, guardian or custodian;

16 (3) a family in which the parent, guardian or
17 custodian of a child refuses to permit the child to live with
18 the parent, guardian or custodian; or

19 (4) a family in which the child refuses to
20 live with his parent, guardian or custodian; and

21 [~~B. "family needs assessment" means an evaluation~~
22 ~~of a child and family for the purpose of identifying the~~
23 ~~family's specific strengths as well as the problems and needs~~
24 ~~of the child and family;~~

25 ~~C.] B. "family services" means services that~~

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1 address specific needs of the child or family [~~and include:~~

2 (1) ~~family preservation services;~~

3 (2) ~~child care services;~~

4 (3) ~~homemaker services;~~

5 (4) ~~crisis counseling;~~

6 (5) ~~transportation services;~~

7 (6) ~~community mental health services;~~

8 (7) ~~individual, family or group counseling~~
9 ~~services;~~

10 (8) ~~parent training services;~~

11 (9) ~~recreational services; and~~

12 (10) ~~community-based services;~~

13 D. ~~"plan for family services" or "plan" means an~~
14 ~~intervention plan based on the needs of the child and family~~
15 ~~that incorporates the family's strengths and is developed as~~
16 ~~part of the assessment and referral process]. "~~

17 Section 27. Section 32A-3A-3 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 65) is amended to read:

19 "32A-3A-3. REQUEST [~~ON BEHALF OF FAMILY IN NEED OF~~] FOR
20 FAMILY SERVICES- - WITHDRAWAL OF REQUEST- - PRESUMPTION OF GOOD
21 FAITH. - -

22 A. Any child or family member who has a reasonable
23 belief that the child or family is [~~a family~~] in need of family
24 services may request family services from the department.

25 B. Any person who has a reasonable belief that a

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1 child or family is [~~a family~~] in need of family services may
2 submit a referral [~~on behalf of the family~~] to the department.

3 [~~C. Any authorized representative of a local school~~
4 ~~board or governing authority of a private school may submit a~~
5 ~~request for family services on behalf of a family to the~~
6 ~~department if:~~

7 (1) ~~a child in that family is absent from~~
8 ~~school without an authorized excuse for more than ten days~~
9 ~~during a school semester; and~~

10 (2) ~~the request is accompanied by an affidavit~~
11 ~~in which the authorized representative swears to the following:~~

12 (a) ~~that a representative of the school~~
13 ~~met with the child's parent, guardian or custodian to discuss~~
14 ~~the child's chronic absence from school or that the child's~~
15 ~~parent, guardian or custodian refused to attend a meeting to~~
16 ~~discuss the child's chronic absence from school;~~

17 (b) ~~that the school has offered the~~
18 ~~child counseling services to determine whether the child's~~
19 ~~educational needs were being met and that when the school~~
20 ~~provides an alternative education program, the child has been~~
21 ~~provided with an opportunity to enroll in the alternative~~
22 ~~education program; and~~

23 (c) ~~that the school has conducted a~~
24 ~~review of the child's educational status, which may include~~
25 ~~psychological or educational testing of the child, in~~

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1 ~~accordance with regulations adopted by the state board of~~
2 ~~education, to determine whether learning problems are a cause~~
3 ~~of the child's absence from school and, if so, what steps were~~
4 ~~taken to overcome the learning problems.~~

5 ~~D.]~~ C. A family that requests or accepts family
6 services may withdraw its request for or acceptance of family
7 services at any time.

8 ~~[E.—Any]~~ D. A person who refers a child or family
9 for family services is presumed to be acting in good faith and
10 shall be immune from civil or criminal liability, unless the
11 person acted in bad faith or with malicious purpose. "

12 Section 28. Section 32A-3A-4 NMSA 1978 (being Laws 1993,
13 Chapter 77, Section 66, as amended) is amended to read:

14 "32A-3A-4. ~~[ASSESSMENT AND]~~ REFERRAL PROCESS. --

15 A. The department ~~[the state department of public~~
16 ~~education and the department of health]~~ shall, ~~[cooperatively]~~
17 subject to the availability of resources, design and implement
18 ~~[an assessment and]~~ a referral process ~~[for the purpose of~~
19 ~~assessing the needs of a]~~ to assist a child or family in ~~[need~~
20 ~~of services and making appropriate referrals]~~ accessing
21 appropriate services.

22 ~~[B. The assessment and referral process shall~~
23 ~~include, to the extent possible given the availability of~~
24 ~~resources:~~

25 ~~(1) the child;~~

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1 ~~(2) the parent, guardian or custodian of the~~
2 ~~child;~~

3 ~~(3) the department;~~

4 ~~(4) an appropriate school official; and~~

5 ~~(5) a mental health professional.~~

6 C. ~~The assessment and referral process may include~~
7 ~~any appropriate person recommended by the child's family, the~~
8 ~~department, the state department of public education, the local~~
9 ~~education agency and the department of health, including:~~

10 ~~(1) the child's teacher;~~

11 ~~(2) the child's school counselor; or~~

12 ~~(3) a physician.~~

13 D.] B. When the child involved in the [assessment
14 and] referral process is an Indian child, the assessment and
15 referral process shall include contact with the Indian child's
16 tribe for the purpose of consulting and exchanging
17 information. "

18 Section 29. Section 32A-3B-1 NMSA 1978 (being Laws 1993,
19 Chapter 77, Section 73) is amended to read:

20 "32A-3B-1. SHORT TITLE--PURPOSE. --

21 A. Chapter [32] 32A, Article 3B NMSA 1978 may be
22 cited as the "Family in Need of Court-Ordered Services Act".

23 B. The Family in Need of Court-Ordered Services Act
24 shall be interpreted and construed to effectuate the following
25 expressed legislative purposes:

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1 [A-] (1) through court intervention, to
2 provide services for a family in need of services when
3 voluntary services have been exhausted; and

4 [B-] (2) to recognize that many instances of
5 truancy and running away by a child are symptomatic of a family
6 in need of services and that in some family situations the
7 child and parent are unable to share a residence. "

8 Section 30. Section 32A-3B-4 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 76) is amended to read:

10 "32A-3B-4. PROTECTIVE CUSTODY--RESTRICTIONS--TIME
11 LIMITATIONS.--

12 A. A law enforcement officer who takes a child into
13 protective custody shall, with all reasonable speed:

14 (1) inform the child of the reasons for the
15 protective custody; and

16 (2) contact the department.

17 B. When the department is contacted by a law
18 enforcement officer who has taken a child into protective
19 custody, the department may:

20 (1) accept custody of the child and designate
21 an appropriate facility in which to place the child; or

22 (2) return the child to the child's parent,
23 guardian or custodian if the child's safety is assured.

24 C. A child taken into protective custody shall not
25 be placed in or transported in a law enforcement vehicle or any

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1 other vehicle that contains an adult placed under arrest,
2 unless circumstances exist in which any delay in transporting
3 the child to an appropriate facility would be likely to result
4 in substantial danger to the child's physical safety. When
5 such circumstances exist, the circumstances shall be described
6 in writing by the driver of the vehicle and submitted to the
7 driver's supervisor within [~~forty-eight hours~~] two days after
8 the driver transported the child.

9 D. A child taken into protective custody shall not
10 be held involuntarily for more than [~~forty-eight hours~~] two
11 days, unless a petition to extend the custody is filed pursuant
12 to the provisions of the Family in Need of Court-Ordered
13 Services Act or the Abuse and Neglect Act.

14 E. When a petition is filed or any time thereafter,
15 the children's court or district court may issue an ex-parte
16 custody order based upon a sworn written statement of facts
17 showing that probable cause exists to believe that protective
18 custody of the child is necessary.

19 F. The protective custody order shall be served on
20 the respondent by a person authorized to serve arrest warrants
21 and shall direct the law enforcement officer to take custody of
22 the child and deliver the child to a place designated by the
23 court.

24 G. The Rules of Evidence do not apply to the
25 issuance of an ex-parte custody order. "

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1 Section 31. Section 32A-3B-5 NMSA 1978 (being Laws 1993,
2 Chapter 77, Section 77) is amended to read:

3 "32A-3B-5. NOTIFICATION TO FAMILY--RELEASE FROM
4 PROTECTIVE CUSTODY.--

5 A. When the department takes a child into
6 protective custody and the child is not released to the child's
7 parent, guardian or custodian, the department shall provide
8 written notice as soon as possible, and in no case later than
9 twenty-four hours, to the child's parent, guardian or
10 custodian, with a statement of the reasons for taking the child
11 into protective custody.

12 B. When the department releases a child placed in
13 protective custody to the family, the department shall refer
14 the family for voluntary family services.

15 C. When the department releases a child from
16 protective custody and the child's parent, guardian or
17 custodian refuses to allow the child to return home, the
18 department shall file a petition pursuant to the provisions of
19 the Abuse and Neglect Act.

20 D. If the department is not releasing the child to
21 the parent, guardian or custodian within two days, the
22 department shall notify the tribe if the child is an Indian
23 child."

24 Section 32. Section 32A-3B-8 NMSA 1978 (being Laws 1993,
25 Chapter 77, Section 80) is amended to read:

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1 "32A- 3B- 8. BASIC RIGHTS. --

2 A. A child subject to the provisions of the
3 Children's Code is entitled to the same basic rights as an
4 adult, except as otherwise provided in the Children's Code.

5 B. In proceedings on a petition alleging a family
6 in need of court-ordered services, the court may appoint
7 counsel if appointment of counsel would serve the interests of
8 justice.

9 C. In proceedings on a petition alleging a family
10 in need of court-ordered services, the court shall appoint a
11 guardian ad litem for ~~[the]~~ a child under the age of fourteen
12 and an attorney for a child fourteen years of age or older at
13 the inception of the proceedings. An officer or employee of an
14 agency vested with legal custody of the child shall not be
15 appointed as a guardian ad litem or attorney for the child.

16 D. Whenever it is reasonable and appropriate, the
17 court shall appoint a guardian ad litem or attorney who is
18 knowledgeable about the child's cultural background.

19 E. A person afforded rights pursuant to the
20 provisions of the Children's Code shall be advised of those
21 rights at that person's first appearance before the court on a
22 petition filed under the Children's Code.

23 F. A child of an alleged or adjudicated family in
24 need of court-ordered services shall not be fingerprinted or
25 photographed for identification purposes, unless pursuant to a

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1 court order. "

2 Section 33. Section 32A-3B-9 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 81) is amended to read:

4 "32A-3B-9. CHANGE IN PLACEMENT. --

5 A. When ~~[the]~~ a child's placement is changed,
6 including a return to the child's home, written notice of the
7 placement change shall be given to the ~~[child's guardian ad~~
8 ~~litem, parent, guardian or legal custodian]~~ parties and to the
9 child's tribe if the child is an Indian child ten days prior to
10 the placement change, unless an emergency situation requires
11 moving the child prior to sending notice.

12 B. When ~~[the]~~ a child's guardian ad litem or
13 attorney requests a court hearing to contest the proposed
14 placement change, the department shall not change the child's
15 placement pending the result of the court hearing, unless an
16 emergency requires changing the child's placement prior to the
17 hearing.

18 C. When a child's placement is changed and notice
19 pursuant to the provisions of Subsection A of this section is
20 not provided, written notice shall be sent to the ~~[child's~~
21 ~~guardian ad litem, parent, guardian or legal custodian]~~ parties
22 and to the child's tribe if the child is an Indian child within
23 three days after the placement change.

24 D. Notice pursuant to the provisions of this
25 section is not required for removal of the child from temporary

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1 emergency care, emergency foster care or respite care. "

2 Section 34. Section 32A-3B-13 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 85) is amended to read:

4 "32A-3B-13. CONDUCT OF HEARINGS--PENALTY.--

5 A. All hearings shall be recorded by stenographic
6 notes or by electronic, mechanical or other appropriate means.

7 B. All hearings regarding a family in need of
8 court-ordered services shall be closed to the general public,
9 subject to the following exceptions:

10 (1) the parties, the parties' counsel,
11 witnesses and other persons approved by the court may be
12 present at the hearings. Those other persons the court finds
13 to have a proper interest in the case or in the work of the
14 court may be admitted by the court to closed hearings on the
15 condition that they refrain from divulging any information
16 [~~which~~] that would identify the child or family involved in the
17 proceedings; and

18 (2) accredited representatives of the news
19 media shall be allowed to be present at the hearings, subject
20 to the condition that they refrain from divulging information
21 that would identify any child involved in the proceedings or
22 the parent, guardian or custodian of that child and further
23 subject to enabling regulations the court finds necessary for
24 the maintenance of order and decorum and for the furtherance of
25 the purposes of the Children's Code.

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1 ~~[C. When the court finds that it is in the best~~
2 ~~interest of the child, the child may be excluded from a family~~
3 ~~in need of court-ordered services hearing. The court may also~~
4 ~~exclude the child from a hearing on dispositional issues.]~~

5 C. If the court finds that it is in the best
6 interest of a child under fourteen years of age, the child may
7 be excluded from a hearing under the Family in Need of Court-
8 Ordered Services Act. A child fourteen years of age or older
9 may be excluded from a hearing only if the court makes a
10 finding that there is a compelling reason to exclude the child
11 and states the factual basis for the finding.

12 D. A person or party granted admission to a closed
13 hearing who intentionally divulges information concerning the
14 hearing in violation of the provisions of this section is
15 guilty of a petty misdemeanor and shall be sentenced pursuant
16 to the provisions of Section 31-19-1 NMSA 1978. "

17 Section 35. Section 32A-3B-17 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 89, as amended) is amended to read:

19 "32A-3B-17. DISPOSITION OF ~~[DEVELOPMENTALLY DISABLED OR~~
20 ~~MENTALLY DISORDERED CHILD IN A PROCEEDING UNDER THE FAMILY IN~~
21 ~~NEED OF SERVICES ACT]~~ A CHILD WITH A DEVELOPMENTAL DISABILITY
22 OR MENTAL DISORDER-- PROCEEDINGS. --

23 A. If during any stage of a proceeding regarding a
24 family in need of court-ordered services petition the evidence
25 indicates that the child ~~[is or may be developmentally disabled~~

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1 ~~or mentally disordered]~~ has or may have a developmental
2 disability or a mental disorder, the court ~~may~~ order the
3 department to:

- 4 (1) secure an assessment of the child;
5 (2) prepare appropriate referrals for services
6 for the child; and
7 (3) if necessary, initiate proceedings for the
8 involuntary placement of the child [~~as mentally disordered or~~
9 ~~developmentally disabled]~~ pursuant to the provisions of the
10 Children's Mental Health and Developmental Disabilities Act.

11 B. When a child in department custody needs
12 involuntary placement for residential mental health or
13 developmental disability services, the department shall file a
14 motion for that child's placement pursuant to the provisions of
15 the Children's Mental Health and Developmental Disabilities
16 Act.

17 C. A court hearing for consideration of an
18 involuntary placement of a child for residential treatment or
19 habilitation, when the child is subject to the provisions of
20 the Family in Need of Court-Ordered Services Act, [~~shall~~] may
21 be heard by the court as a part of the family in need of court-
22 ordered services proceedings or may be heard in a separate
23 proceeding. All parties to the family in need of court-ordered
24 services proceedings shall be provided with notice of the
25 involuntary placement hearing.

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1 D. A guardian ad litem appointed pursuant to the
2 Family in Need of Court-Ordered Services Act shall serve as the
3 guardian ad litem for a child for the purposes of the
4 Children's Mental Health and Developmental Disabilities Act.
5 When a child is fourteen years of age or older, [~~and his~~
6 ~~guardian ad litem determines that the child's wishes conflict~~
7 ~~with the child's best interests, the guardian ad litem shall~~
8 ~~petition the court for the appointment of an attorney to~~
9 ~~represent the child pursuant to the Children's Mental Health~~
10 ~~and Developmental Disabilities Act. Upon receiving the~~
11 ~~petition, the court shall appoint counsel for the child] the
12 child shall be represented by an attorney unless, after
13 consultation between the child and the child's attorney, the
14 child elects to be represented by counsel appointed by the
15 court in the proceedings under the Children's Mental Health and
16 Developmental Disabilities Act.~~

17 E. When a child is subject to the provisions of the
18 Family in Need of Court-Ordered Services Act and is receiving
19 residential treatment or habilitation services, any
20 documentation required pursuant to the Children's Mental Health
21 and Developmental Disabilities Act shall be filed with the
22 court as part of the family in need of court-ordered services
23 proceeding. A review of the child's placement in a residential
24 treatment or habilitation program shall occur in the same
25 manner and within the same time requirements as provided in the

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1 Children's Mental Health and Developmental Disabilities Act.

2 F. The clerk of the court shall maintain a separate
3 section within a child's family in need of court-ordered
4 services file for documents pertaining to actions taken under
5 the Children's Mental Health and Developmental Disabilities
6 Act.

7 G. A child subject to the provisions of the Family
8 in Need of Court-Ordered Services Act who receives treatment in
9 a residential treatment or habilitation program shall enjoy all
10 the substantive and procedural rights set forth in the
11 Children's Mental Health and Developmental Disabilities Act. "

12 Section 36. Section 32A-3B-22 NMSA 1978 (being Laws 1993,
13 Chapter 77, Section 94) is amended to read:

14 "32A-3B-22. CONFIDENTIALITY--RECORDS--PENALTY.--

15 A. All records or information concerning a family
16 in need of court-ordered services, including social records,
17 diagnostic evaluation, psychiatric or psychological reports,
18 videotapes, transcripts and audio recordings of a child's
19 statement of abuse or medical reports [~~that are in the~~
20 ~~possession of the court or the department or that were produced~~
21 ~~or obtained by the department during~~], obtained as a result of
22 an investigation in anticipation of or incident to a family in
23 need of court-ordered services proceeding shall be confidential
24 and closed to the public.

25 B. The records described in Subsection A of this

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1 section shall be [~~open to inspection only by~~] disclosed only to
2 the parties and to:

3 (1) court personnel;

4 (2) court appointed special advocates;

5 (3) the child's guardian ad litem or attorney;

6 (4) the child's attorney representing the
7 child in an abuse or neglect action, a delinquency action or
8 any other action, including a public defender;

9 [~~(4)~~] (5) department personnel;

10 [~~(5)~~] (6) any local substitute care review
11 board or any agency contracted to implement local substitute
12 care review boards;

13 [~~(6)~~] (7) law enforcement officials;

14 [~~(7)~~] (8) district attorneys;

15 [~~(8) any~~] (9) a state or tribal government
16 social services agency [~~in~~] of any state;

17 [~~(9)~~] (10) those persons or entities of an
18 Indian tribe specifically authorized to inspect the records
19 pursuant to the federal Indian Child Welfare Act of 1978 or any
20 regulations promulgated thereunder;

21 [~~(10)~~] (11) tribal juvenile justice system and
22 social service representatives;

23 [~~(11)~~] (12) a foster parent, if the records
24 are those of a child currently placed with that foster parent
25 or of a child being considered for placement with that foster

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1 parent and the records concern the social, medical,
2 psychological or educational needs of the child;

3 [~~(12)~~] (13) school personnel involved with the
4 child, if the records concern the child's social or educational
5 needs;

6 [~~(13)~~] (14) health care or mental health
7 professionals involved in the evaluation or treatment of the
8 child, the child's parents, guardian or custodian or other
9 family members;

10 [~~(14)~~] (15) protection and advocacy
11 representatives, pursuant to the federal Developmental
12 Disabilities Assistance and Bill of Rights Act and the federal
13 Protection and Advocacy for Mentally Ill Individuals Amendments
14 Act of 1991; and

15 [~~(15)~~] (16) any other person or entity, by
16 order of the court, having a legitimate interest in the case or
17 the work of the court.

18 C. Whoever intentionally and unlawfully releases
19 any information or records that are closed to the public
20 pursuant to the provisions of the Children's Code or releases
21 or makes other unlawful use of records in violation of that
22 code is guilty of a petty misdemeanor.

23 D. The department shall promulgate rules for
24 implementing disclosure of records pursuant to this section and
25 in compliance with state and federal law and the Children's

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1 Court Rules. "

2 Section 37. A new section of the Family in Need of Court-
3 Ordered Services Act is enacted to read:

4 "[NEW MATERIAL] INDIAN CHILD PLACEMENT--PREFERENCES. --

5 A. An Indian child accepted in department custody
6 shall be placed in the least restrictive setting that most
7 closely approximates a family in which the child's special
8 needs, if any, may be met. The Indian child shall be placed
9 within reasonable proximity to the child's home, taking into
10 account any special needs of the child. Preference shall be
11 given to placement with:

12 (1) a member of the Indian child's extended
13 family;

14 (2) a foster care home licensed, approved and
15 specified by the Indian child's tribe;

16 (3) an Indian foster care home licensed or
17 approved by an authorized non-Indian licensing authority; or

18 (4) an institution for children approved by
19 the Indian child's tribe or operated by an Indian organization
20 that has a program suitable to meet the Indian child's needs.

21 B. When the placement preferences set forth in
22 Subsection A of this section are not followed or if the Indian
23 child is placed in an institution, a plan shall be developed to
24 ensure that the Indian child's cultural ties are protected and
25 fostered. "

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1 Section 38. Section 32A-4-3 NMSA 1978 (being Laws 1993,
2 Chapter 77, Section 97, as amended) is amended to read:

3 "32A-4-3. DUTY TO REPORT CHILD ABUSE AND CHILD NEGLECT--
4 RESPONSIBILITY TO INVESTIGATE CHILD ABUSE OR NEGLECT--
5 PENALTY. --

6 A. Every person, including a licensed physician; a
7 resident or an intern examining, attending or treating a child;
8 a law enforcement officer; a judge presiding during a
9 proceeding; a registered nurse; a visiting nurse; a
10 schoolteacher; a school official; a social worker acting in an
11 official capacity; or a member of the clergy who has
12 information that is not privileged as a matter of law, who
13 knows or has a reasonable suspicion that a child is an abused
14 or a neglected child shall report the matter immediately to:

- 15 (1) a local law enforcement agency;
- 16 (2) the department [~~office in the county where~~
17 ~~the child resides~~]; or
- 18 (3) a tribal law enforcement or social
19 services agency for any Indian child residing in Indian
20 country.

21 B. A law enforcement agency receiving the report
22 shall immediately transmit the facts of the report and the
23 name, address and phone number of the reporter by telephone to
24 the department [~~office in the county where the child resides~~]
25 and shall transmit the same information in writing within

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1 forty-eight hours. [A] The department [~~office receiving a~~
2 ~~report~~] shall immediately transmit the facts of the report and
3 the name, address and phone number of the reporter by telephone
4 to a local law enforcement agency and shall transmit the same
5 information in writing within forty-eight hours. The written
6 report shall contain the names and addresses of the child and
7 the child's parents, guardian or custodian, the child's age,
8 the nature and extent of the child's injuries, including any
9 evidence of previous injuries, and other information that the
10 maker of the report believes might be helpful in establishing
11 the cause of the injuries and the identity of the person
12 responsible for the injuries. The written report shall be
13 submitted upon a standardized form agreed to by the law
14 enforcement agency and the department.

15 C. The recipient of a report under Subsection A of
16 this section shall take immediate steps to ensure prompt
17 investigation of the report. The investigation shall ensure
18 that immediate steps are taken to protect the health or welfare
19 of the alleged abused or neglected child, as well as that of
20 any other child under the same care who may be in danger of
21 abuse or neglect. A local law enforcement [~~agency~~] officer
22 trained in the investigation of child abuse and neglect is
23 responsible for investigating reports of alleged child abuse or
24 neglect at schools, daycare facilities or child care
25 facilities.

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1 D. If the child alleged to be abused or neglected
2 is in the care or control of or in a facility administratively
3 connected to the department, the report shall be investigated
4 by a local law enforcement officer trained in the investigation
5 of child abuse and neglect. The investigation shall ensure
6 that immediate steps are taken to protect the health or welfare
7 of the alleged abused or neglected child, as well as that of
8 any other child under the same care who may be in danger of
9 abuse or neglect.

10 E. A law enforcement agency or the department
11 shall have access to any of the records pertaining to a child
12 abuse or neglect case maintained by any of the persons
13 enumerated in Subsection A of this section, except as otherwise
14 provided in the Abuse and Neglect Act.

15 F. A person who violates the provisions of
16 Subsection A of this section is guilty of a misdemeanor and
17 shall be sentenced pursuant to the provisions of Section
18 31-19-1 NMSA 1978. "

19 Section 39. Section 32A-4-4 NMSA 1978 (being Laws 1993,
20 Chapter 77, Section 98) is amended to read:

21 "32A-4-4. COMPLAINTS--REFERRAL--PRELIMINARY INQUIRY.--

22 A. [~~Complaints~~] Reports alleging neglect or abuse
23 shall be referred to the department, which shall conduct an
24 investigation to determine the best interests of the child with
25 regard to any action to be taken. The name and information

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1 regarding the person making the report shall not be disclosed
2 absent the consent of the informant or a court order.

3 B. During the investigation of a [~~complaint~~] report
4 alleging neglect or abuse, the matter may be referred to
5 another appropriate agency and conferences may be conducted for
6 the purpose of effecting adjustments or agreements that will
7 obviate the necessity for filing a petition. [~~At the~~
8 ~~commencement of the investigation~~] A representative of the
9 department shall, at the initial time of contact with the party
10 subject to the investigation, advise the party of the reports
11 or allegations made, in a manner that is consistent with laws
12 protecting the rights of the informant. The parties shall be
13 advised of their basic rights and no party may be compelled to
14 appear at any conference, to produce any papers or to visit any
15 place. The investigation shall be completed within a
16 reasonable period of time from the date the [~~complaint~~] report
17 was made.

18 C. After completion of the investigation on a
19 neglect or abuse [~~complaint~~] report, the department shall
20 either recommend or refuse to recommend the filing of a
21 petition.

22 D. When a child is taken into custody, the
23 department shall file a petition within two days. [~~after the~~
24 ~~date that the child is taken into custody. When~~] If a
25 petition is not filed in a timely manner, the child shall be

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1 released to the child's parent, guardian or custodian. "

2 Section 40. Section 32A-4-5 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 99, as amended) is amended to read:

4 "32A-4-5. ADMISSIBILITY OF REPORT IN EVIDENCE--IMMUNITY
5 OF REPORTING PERSON--INVESTIGATION OF REPORT. --

6 A. In any proceeding alleging neglect or abuse
7 under the Children's Code resulting from a report required by
8 Section [~~32-4-3~~] 32A-4-3 NMSA 1978 or in any proceeding in
9 which that report or any of its contents are sought to be
10 introduced in evidence, the report or its contents or any other
11 facts related thereto or to the condition of the child who is
12 the subject of the report shall not be excluded on the ground
13 that the matter is or may be the subject of a physician-patient
14 privilege or similar privilege or rule against disclosure.

15 B. Anyone reporting an instance of alleged child
16 neglect or abuse or participating in a judicial proceeding
17 brought as a result of a report required by Section [~~32-4-3~~]
18 32A-4-3 NMSA 1978 is presumed to be acting in good faith and
19 shall be immune from liability, civil or criminal, that might
20 otherwise be incurred or imposed by the law, unless the person
21 acted in bad faith or with malicious purpose.

22 C. After properly verifying the identity of the
23 public official, any school personnel or other person who has
24 the duty to report child abuse pursuant to Section [~~32-4-3~~]
25 32A-4-3 NMSA 1978 shall permit a member of a law enforcement

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1 agency, including tribal police officers, an employee of the
2 district attorney's office, an investigative interviewer for a
3 program described in Subsection E of this section or an
4 employee of the department, to interview ~~the~~ a child with
5 respect to a report without the permission of the child's
6 parent or guardian ~~[or custodian]~~. Any person permitting an
7 interview pursuant to this subsection is presumed to be acting
8 in good faith and shall be immune from liability, civil or
9 criminal, that might otherwise be incurred or imposed by law,
10 unless the person acted in bad faith or with malicious purpose.

11 D. ~~[All]~~ An investigation may be conducted by law
12 enforcement [personnel, an employee of], the district
13 attorney's office, [an investigative interviewer for] a program
14 described in Subsection E of this section and [all employees
15 of] the department [shall conduct interviews]. Interviews
16 shall be conducted in a manner and place that protects the
17 child and family from unnecessary trauma and embarrassment.
18 The investigating entity shall conduct the investigation in a
19 manner that will protect the privacy of the child and the
20 family, with the paramount consideration being the safety of
21 the child.

22 E. If a community has a program for child abuse
23 investigation that includes an investigation interview of the
24 alleged victim, the investigation may be conducted at a site
25 designated by the community program.

1 F. Prior to interviewing a child, the department
2 shall notify the parent or guardian of the child who is being
3 interviewed, unless the department determines that notification
4 would adversely affect the safety of the child about whom the
5 report has been made or compromise the investigation."

6 Section 41. Section 32A-4-6 NMSA 1978 (being Laws 1993,
7 Chapter 77, Section 100) is amended to read:

8 "32A-4-6. TAKING INTO CUSTODY--PENALTY.--

9 A. A child may be held or taken into custody:

10 (1) by a law enforcement officer when the
11 officer has reasonable grounds to believe that the child is
12 suffering from illness or injury as a result of alleged abuse
13 or neglect or has been abandoned or is in danger from the
14 child's surroundings and removal from those surroundings is
15 necessary; or

16 (2) by medical personnel when there are
17 reasonable grounds to believe that the child has been injured
18 as a result of abuse or neglect and that the child may be at
19 risk of further injury if returned to the child's parent,
20 guardian or custodian. The medical personnel shall hold the
21 child until a law enforcement officer is available to take
22 custody of the child or until a law enforcement officer has
23 authorized release of the child to the department.

24 B. When a child is taken into custody [~~by the~~
25 ~~department~~], the department shall make reasonable efforts to

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1 determine whether the child is an Indian child.

2 C. If a child taken into custody is an Indian child
3 and is alleged to be neglected or abused, the department shall
4 give notice to the agent of the Indian child's tribe in
5 accordance with the federal Indian Child Welfare Act of 1978.

6 D. Any person who intentionally interferes with
7 protection of a child, as provided by Subsection A of this
8 section, is guilty of a petty misdemeanor. "

9 Section 42. Section 32A-4-7 NMSA 1978 (being Laws 1993,
10 Chapter 77, Section 101, as amended) is amended to read:

11 "32A-4-7. RELEASE OR DELIVERY FROM CUSTODY. --

12 A. A person taking a child into custody shall, with
13 all reasonable speed:

14 (1) release the child to the child's parent,
15 guardian or custodian and issue verbal counsel or warning as
16 may be appropriate; or

17 (2) deliver the child to the department or to
18 an appropriate shelter-care facility or, in the case of a child
19 who is believed to be suffering from a serious physical or
20 mental condition or illness that requires prompt treatment or
21 diagnosis, deliver the child to a medical facility. If a law
22 enforcement officer delivers a child to a shelter-care facility
23 or a medical facility, the officer shall immediately notify the
24 department that the child has been placed in the department's
25 legal custody.

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1 B. When an alleged neglected or abused child is
2 delivered to the department, a department caseworker shall
3 review the need for placing the child in custody and shall
4 release the child from custody unless custody is appropriate or
5 has been ordered by the court. When a child is delivered to an
6 appropriate shelter-care facility or medical facility, a
7 department caseworker shall review the need for retention of
8 custody within a reasonable time after delivery of the child to
9 the facility and shall release the child from custody unless
10 custody is appropriate or has been ordered by the court.

11 C. If a child is placed in the legal custody of the
12 department and is not released to the child's parent, guardian
13 or custodian, the department shall give written notice thereof
14 as soon as possible, and in no case later than twenty-four
15 hours, to the child's parent, guardian or custodian together
16 with a statement of the reason for taking the child into
17 custody.

18 D. Reasonable efforts shall be made to prevent or
19 eliminate the need for removing the child from the child's
20 home, with the paramount concern being the child's health and
21 safety. In all cases when a child is taken into custody, the
22 child shall be released to the child's parent, guardian or
23 custodian, unless the department files a petition within two
24 days from the date that the child was taken into custody."

25 Section 43. Section 32A-4-10 NMSA 1978 (being Laws 1993,

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1 Chapter 77, Section 104) is amended to read:

2 "32A-4-10. BASIC RIGHTS. --

3 A. A child subject to the provisions of the
4 Children's Code is entitled to the same basic rights as an
5 adult, except as otherwise provided in the Children's Code.

6 B. ~~[In proceedings on a petition alleging neglect~~
7 ~~or abuse]~~ At the inception of an abuse or neglect proceeding,
8 counsel shall be appointed for the parent, guardian or
9 custodian of the child ~~[at the inception of the proceeding]~~.
10 The appointed counsel shall represent the parent, guardian or
11 custodian who is named as a party until an indigency
12 determination is made at the custody hearing. Counsel shall
13 also be appointed if, in the court's discretion, appointment of
14 counsel is required in the interest of justice.

15 C. ~~[During]~~ At the inception of an abuse and
16 neglect proceeding, the court shall appoint a guardian ad litem
17 for a child [at the inception of the proceeding] under fourteen
18 years of age. If the child is fourteen years of age or older,
19 the court shall appoint an attorney for the child. No officer
20 or employee of an agency that is vested with the legal custody
21 of the child shall be appointed as guardian ad litem of or
22 attorney for the child. Only an attorney with appropriate
23 experience shall be appointed as guardian ad litem of or
24 attorney for the child.

25 D. When reasonable and appropriate, the court shall

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1 appoint a guardian ad litem or attorney who is knowledgeable
2 about the child's particular cultural background.

3 E. When a child reaches fourteen years of age, the
4 child's guardian ad litem shall continue as the child's
5 attorney; provided that the court shall appoint a different
6 attorney for the child if:

7 (1) the child requests a different attorney;

8 (2) the guardian ad litem requests to be
9 removed; or

10 (3) the court determines that the appointment
11 of a different attorney is appropriate.

12 ~~[E.]~~ F. The court shall assure that the ~~[child~~
13 ~~receives zealous representation by the child's guardian ad~~
14 ~~litem, pursuant to the provisions of Section 32-1-6 NMSA 1978]~~
15 child's guardian ad litem zealously represents the child's best
16 interest and that the child's attorney zealously represents the
17 child.

18 ~~[F.]~~ G. A person afforded rights under the
19 Children's Code shall be advised of those rights at that
20 person's first appearance before the court on a petition under
21 the Children's Code. "

22 Section 44. Section 32A-4-14 NMSA 1978 (being Laws 1993,
23 Chapter 77, Section 108) is amended to read:

24 "32A-4-14. CHANGE IN PLACEMENT. --

25 A. When the child's placement is changed, including

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1 a return to the child's home, written notice shall be sent to
2 the child's guardian ad litem, all parties, the child's CASA,
3 the child's foster parents and the court ten days prior to the
4 placement change, unless an emergency situation requires moving
5 the child prior to sending notice.

6 B. When the child's guardian ad litem requests a
7 court hearing to contest the proposed change, the department
8 shall not change the child's placement pending the results of
9 the court hearing, unless an emergency requires changing the
10 child's placement prior to the hearing.

11 C. When a child's placement is changed without
12 prior notice as provided for in Subsection A of this section,
13 written notice shall be sent to the child's guardian ad litem,
14 all parties, the child's CASA, the child's foster parents and
15 the court within three days after the placement change.

16 D. Written notice is not required for removal of a
17 child from temporary emergency care, emergency foster care or
18 respite care. The department shall provide oral notification
19 of the removal to the child's guardian ad litem.

20 E. [No] Notice need not be given to the parties
21 [~~the child's foster parents~~], other than the child, or to the
22 court when placement is changed at the request of the child's
23 foster parents or substitute care provider. Notice shall be
24 given to the child's guardian ad litem or attorney. "

25 Section 45. Section 32A-4-18 NMSA 1978 (being Laws 1993,

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1 Chapter 77, Section 112, as amended) is amended to read:

2 "32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--
3 PROBABLE CAUSE.--

4 A. When a child alleged to be neglected or abused
5 has been [~~taken into~~] placed in the legal custody [by] of the
6 department or the department has petitioned the court for
7 temporary custody, a custody hearing shall be held within ten
8 days from the date the petition is filed to determine if the
9 child should remain in or be placed in the department's custody
10 pending adjudication. Upon written request of the respondent,
11 the hearing may be held earlier, but in no event shall the
12 hearing be held sooner than two days after the date the
13 petition was filed.

14 B. The parent, guardian or custodian of the child
15 alleged to be abused or neglected shall be given reasonable
16 notice of the time and place of the custody hearing.

17 C. At the custody hearing, the court shall
18 [~~release~~] return legal custody of the child to his parent,
19 guardian or custodian unless probable cause exists to believe
20 that:

21 (1) the child is suffering from an illness or
22 injury, and the parent, guardian or custodian is not providing
23 adequate care for the child;

24 (2) the child is in immediate danger from his
25 surroundings, and removal from those surroundings is necessary

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1 for the child's safety or well-being;

2 (3) the child will be subject to injury by
3 others if not placed in the custody of the department;

4 (4) there has been an abandonment of the child
5 by his parent, guardian or custodian; or

6 (5) the parent, guardian or custodian is not
7 able or willing to provide adequate supervision and care for
8 the child.

9 D. At the conclusion of the custody hearing, if the
10 court determines that [~~eustody pending adjudication is~~
11 ~~appropriate~~] probable cause exists pursuant to Subsection C of
12 this section, the court may:

13 (1) return legal custody of the child to his
14 parent, guardian or custodian upon such conditions as will
15 reasonably [~~assure~~] ensure the safety and well-being of the
16 child, including protective supervision by the department; or

17 (2) award legal custody of the child to the
18 department [~~with or without provision for visitation rights for~~
19 ~~the parent, guardian or custodian of the child~~].

20 Reasonable efforts shall be made to preserve and reunify
21 the family, with the paramount concern being the child's health
22 and safety.

23 E. At the conclusion of the custody hearing, the
24 court may order the respondent or the child alleged to be
25 neglected or abused, or both, to undergo appropriate diagnostic

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1 examinations or evaluations. Copies of any diagnostic or
2 evaluation reports ordered by the court shall be provided to
3 the parties at least five days before the adjudicatory hearing
4 is scheduled. The reports shall not be sent to the court.

5 F. The Rules of Evidence shall not apply to custody
6 hearings. "

7 Section 46. Section 32A-4-20 NMSA 1978 (being Laws 1993,
8 Chapter 77, Section 114, as amended) is amended to read:

9 "32A-4-20. CONDUCT OF HEARINGS-- FINDINGS-- DISMISSAL--
10 DISPOSITIONAL MATTERS-- PENALTY. --

11 A. The proceedings shall be recorded by
12 stenographic notes or by electronic, mechanical or other
13 appropriate means.

14 B. All abuse and neglect hearings shall be closed
15 to the general public.

16 C. Only the parties, their counsel, witnesses and
17 other persons approved by the court may be present at a closed
18 hearing. The foster parent, preadoptive parent or relative
19 providing care for the child shall be given notice and an
20 opportunity to be heard at the dispositional phase. Those
21 other persons the court finds to have a proper interest in the
22 case or in the work of the court may be admitted by the court
23 to closed hearings on the condition that they refrain from
24 divulging any information that would identify the child or
25 family involved in the proceedings.

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1 D. Accredited representatives of the news media
2 shall be allowed to be present at closed hearings, subject to
3 the condition that they refrain from divulging information that
4 would identify any child involved in the proceedings or the
5 parent, guardian or custodian of that child and subject to
6 enabling regulations as the court finds necessary for the
7 maintenance of order and decorum and for the furtherance of the
8 purposes of the Children's Code.

9 E. If the court finds that it is in the best
10 interest of ~~[the]~~ a child under fourteen years of age, the
11 child may be excluded from a ~~[neglect or an abuse]~~ hearing
12 under the ~~[same conditions, a child may be excluded by the~~
13 ~~court during a hearing on dispositional issues]~~ Abuse and
14 Neglect Act. A child fourteen years of age or older may be
15 excluded from a hearing only if the court makes a finding that
16 there is a compelling reason to exclude the child and states
17 the factual basis for the finding.

18 F. Those persons or parties granted admission to a
19 closed hearing who intentionally divulge information in
20 violation of this section are guilty of a petty misdemeanor.

21 G. The court shall determine if the allegations of
22 the petition are admitted or denied. If the allegations are
23 denied, the court shall proceed to hear evidence on the
24 petition. The court, after hearing all of the evidence bearing
25 on the allegations of neglect or abuse, shall make and record

1 its findings on whether the child is a neglected child, an
2 abused child or both. If the petition alleges that the parent,
3 guardian or custodian has subjected the child to aggravated
4 circumstances, then the court shall also make and record its
5 findings on whether the aggravated circumstances have been
6 proven.

7 H. If the court finds on the basis of a valid
8 admission of the allegations of the petition or on the basis of
9 clear and convincing evidence, competent, material and relevant
10 in nature, that the child is neglected or abused, the court may
11 proceed immediately or at a postponed hearing to make
12 disposition of the case. If the court does not find that the
13 child is neglected or abused, the court shall dismiss the
14 petition and may refer the family to the department for
15 appropriate services.

16 I. In that part of the hearings held under the
17 Children's Code on dispositional issues, all relevant and
18 material evidence helpful in determining the questions
19 presented, including oral and written reports, may be received
20 by the court and may be relied upon to the extent of its
21 probative value even though not competent had it been offered
22 during the part of the hearings on adjudicatory issues.

23 J. On the court's motion or that of a party, the
24 court may continue the hearing on the petition for a period not
25 to exceed thirty days to receive reports and other evidence in

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1 connection with disposition. The court shall continue the
2 hearing pending the receipt of the predisposition study and
3 report if that document has not been prepared and received.
4 During any continuances under this subsection, the court shall
5 make an appropriate order for legal custody. "

6 Section 47. Section 32A-4-22 NMSA 1978 (being Laws 1993,
7 Chapter 77, Section 116, as amended) is amended to read:

8 "32A-4-22. DISPOSITION OF ADJUDICATED ABUSED OR NEGLECTED
9 CHILD. --

10 A. If not held in conjunction with the adjudicatory
11 hearing, the dispositional hearing shall be commenced within
12 thirty days after the conclusion of the adjudicatory hearing.
13 At the conclusion of the dispositional hearing, the court shall
14 make and include in the dispositional judgment its findings on
15 the following:

16 (1) the interaction and interrelationship of
17 the child with his parent, siblings and any other person who
18 may significantly affect the child's best interest;

19 (2) the child's adjustment to his home, school
20 and community;

21 (3) the mental and physical health of all
22 individuals involved;

23 (4) the wishes of the child as to [~~his~~
24 eustodian] the child's placement;

25 (5) the wishes of the child's parent, guardian

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1 or custodian as to the child's custody;

2 (6) whether there exists a relative of the
3 child or other individual who, after study by the department,
4 is found to be qualified to receive and care for the child;

5 (7) the availability of services recommended
6 in the treatment plan prepared as a part of the predisposition
7 study in accordance with the provisions of Section 32A-4-21
8 NMSA 1978;

9 (8) the ability of the parent to care for the
10 child in the home so that no harm will result to the child;

11 (9) whether reasonable efforts were used by
12 the department to prevent removal of the child from the home
13 prior to placement in substitute care and whether reasonable
14 efforts were used to attempt reunification of the child with
15 the natural parent; and

16 (10) if the child is an Indian child, whether
17 the placement preferences set forth in the federal Indian Child
18 Welfare Act of 1978 or the placement preferences of the child's
19 Indian tribe have been followed and whether the Indian child's
20 treatment plan provides for maintaining the Indian child's
21 cultural ties. When placement preferences have not been
22 followed, good cause for noncompliance shall be clearly stated
23 and supported.

24 B. If a child is found to be neglected or abused,
25 the court may enter its judgment making any of the following

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1 dispositions to protect the welfare of the child:

2 (1) permit the child to remain with his
3 parent, guardian or custodian, subject to those conditions and
4 limitations the court may prescribe;

5 (2) place the child under protective
6 supervision of the department; or

7 (3) transfer legal custody of the child to any
8 of the following:

9 (a) the noncustodial parent, if it is
10 found to be in the child's best interest;

11 (b) an agency responsible for the care
12 of neglected or abused children; or

13 (c) a child-placement agency willing and
14 able to assume responsibility for the education, care and
15 maintenance of the child and licensed or otherwise authorized
16 by law to receive and provide care for the child.

17 C. If a child is found to be neglected or abused,
18 in its dispositional judgment the court shall also order the
19 department to implement and the child's parent, guardian or
20 custodian to cooperate with any treatment plan approved by the
21 court. Reasonable efforts shall be made to preserve and
22 reunify the family, with the paramount concern being the
23 child's health and safety. The court may determine that
24 reasonable efforts are not required to be made when the court
25 finds that:

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- (1) the efforts would be futile; or
- (2) the parent, guardian or custodian has subjected the child to aggravated circumstances [~~or~~
- ~~(3) the parental rights of the parent to a sibling of the child have been terminated involuntarily].~~

D. Any parent, guardian or custodian of a child who is placed in the legal custody of the department or other person pursuant to Subsection B of this section shall have reasonable rights of visitation with the child as determined by the court, unless the court finds that the best interests of the child preclude any visitation.

E. The court may order reasonable visitation between a child placed in the custody of the department and the child's siblings or any other person who may significantly affect the child's best interest, if the court finds the visitation to be in the child's best interest.

F. Unless a child found to be neglected or abused is also found to be delinquent, the child shall not be confined in an institution established for the long-term care and rehabilitation of delinquent children.

G. When the court vests legal custody in an agency, institution or department, the court shall transmit with the dispositional judgment copies of the clinical reports, the predisposition study and report and any other information it has pertinent to the care and treatment of the child.

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1 H. Prior to ~~[any]~~ a child being placed in the
2 custody or protective supervision of the department, the
3 department shall be provided with reasonable oral or written
4 notification and an opportunity to be heard. At any hearing
5 held pursuant to this subsection, the department ~~may~~ appear as
6 a party.

7 I. When a child is placed in the custody of the
8 department, the department shall investigate whether the child
9 is eligible for enrollment as a member of an Indian tribe and,
10 if so, the department shall pursue the enrollment on the
11 child's behalf.

12 J. When the court determines pursuant to Subsection
13 C of this section that no reasonable efforts at reunification
14 are required, the court shall conduct, within thirty days, a
15 permanency hearing as described in Section 32A-4-25.1 NMSA
16 1978. Reasonable efforts shall be made to implement and
17 finalize the permanency plan in a timely manner."

18 Section 48. Section 32A-4-23 NMSA 1978 (being Laws 1993,
19 Chapter 77, Section 117, as amended) is amended to read:

20 "32A-4-23. DISPOSITION OF A ~~[MENTALLY DISORDERED OR~~
21 ~~DEVELOPMENTALLY DISABLED]~~ CHILD WITH A MENTAL DISORDER OR A
22 DEVELOPMENTAL DISABILITY IN A PROCEEDING UNDER THE ABUSE AND
23 NEGLECT ACT. --

24 A. If in a hearing, at any stage of a proceeding on
25 a neglect or abuse petition, the evidence indicates that ~~[the]~~

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1 a child [~~is developmentally disabled or mentally disordered~~]
2 has a mental disorder or a developmental disability, the court
3 shall adjudicate the issue of neglect or abuse under the
4 provisions of the Children's Code.

5 B. When a child in department custody needs
6 involuntary placement for residential mental health or
7 developmental disability services as a result of a mental
8 disorder or developmental disability, the department shall
9 petition for that child's placement pursuant to the provisions
10 of the Children's Mental Health and Developmental Disabilities
11 Act.

12 C. Any child in department custody who is placed
13 for residential treatment or habilitation pursuant to the
14 provisions of the Children's Mental Health and Developmental
15 Disabilities Act shall remain in the legal custody of the
16 department while in residential treatment or habilitation or
17 until further order of the court.

18 D. A court hearing for consideration of an
19 involuntary placement of a child for residential treatment or
20 habilitation, when the child is subject to the provisions of
21 the Abuse and Neglect Act, [~~shall~~] may be heard by the court as
22 part of the abuse or neglect proceedings or may be heard in a
23 separate proceeding. All parties to the abuse or neglect
24 proceedings shall be provided with notice of the involuntary
25 placement hearing.

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1 E. A guardian ad litem appointed pursuant to the
2 Abuse and Neglect Act shall serve as a guardian ad litem for a
3 child for the purposes of the Children's Mental Health and
4 Developmental Disabilities Act. When a child is fourteen years
5 of age or older [~~and his guardian ad litem determines that the~~
6 ~~child's wishes conflict with the child's best interests, the~~
7 ~~guardian ad litem shall petition the court for the appointment~~
8 ~~of an attorney to represent the child pursuant to the~~
9 ~~Children's Mental Health and Developmental Disabilities Act.~~
10 ~~Upon receiving the petition, the court shall appoint counsel~~
11 ~~for the child], the child shall be represented by an attorney~~
12 unless, after consultation between the child and the child's
13 attorney, the child elects to be represented by counsel
14 appointed in the proceedings under the Children's Mental Health
15 and Developmental Disabilities Act.

16 F. When a child is subject to the provisions of the
17 Abuse and Neglect Act and is receiving residential treatment or
18 habilitation services, any documentation required pursuant to
19 the Children's Mental Health and Developmental Disabilities Act
20 shall be filed with the court as part of the abuse or neglect
21 proceeding. A review of the child's placement in a residential
22 treatment or habilitation program shall occur in the same
23 manner and within the same time requirements as provided in the
24 Children's Mental Health and Developmental Disabilities Act.

25 G. The clerk of the court shall maintain a separate

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1 section within an abuse or neglect file for documents
2 pertaining to actions taken under the Children's Mental Health
3 and Developmental Disabilities Act.

4 H. A child subject to the provisions of the Abuse
5 and Neglect Act who receives treatment in a residential
6 treatment or habilitation program shall enjoy all the
7 substantive and procedural rights set forth in the Children's
8 Mental Health and Developmental Disabilities Act. "

9 Section 49. Section 32A-4-25 NMSA 1978 (being Laws 1993,
10 Chapter 77, Section 119, as amended) is amended to read:

11 "32A-4-25. PERIODIC REVIEW OF DISPOSITIONAL JUDGMENTS. --

12 A. The initial judicial review shall be held within
13 sixty days of the disposition. At the initial review, the
14 parties shall demonstrate to the court efforts made to
15 implement the treatment plan approved by the court in its
16 dispositional order. The court shall determine the extent to
17 which the treatment plan has been implemented and make
18 supplemental orders as necessary to [assure] ensure compliance
19 with the treatment plan and the safety of the child. Prior to
20 the initial judicial review, the department shall submit a copy
21 of the adjudicatory order, the dispositional order and notice
22 of the initial judicial review to the local substitute care
23 review board for that judicial district created under the
24 Citizen Substitute Care Review Act. A representative of the
25 local substitute care review board shall be permitted to attend

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1 and comment to the court.

2 B. Subsequent periodic reviews of dispositional
3 orders shall be held within six months of the conclusion of the
4 permanency hearing or, if a motion has been filed for
5 termination of parental rights or permanent guardianship,
6 within six months of the decision on that motion and every six
7 months thereafter. Prior to the review, the department shall
8 submit a progress report to the local substitute care review
9 board for that judicial district created under the Citizen
10 Substitute Care Review Act. Prior to any judicial review by
11 the court pursuant to this section, the local substitute care
12 review board may review the dispositional order or the
13 continuation of the order and the department's progress report
14 and report its findings and recommendations to the court. The
15 review may be carried out by either of the following:

16 (1) a judicial review hearing conducted by the
17 court; or

18 (2) a judicial review hearing conducted by a
19 special master appointed by the court; provided, however, that
20 the court approve any findings made by the special master.

21 C. The children's court attorney shall give notice
22 to all parties, the child's guardian ad litem, the child's
23 CASA, a contractor administering the local substitute care
24 review board and the child's foster parent or substitute care
25 provider of the time, place and purpose of any judicial review

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1 hearing held pursuant to Subsection A or B of this section.

2 D. At any judicial review hearing held pursuant to
3 Subsection B of this section, the department, the child's
4 guardian ad litem and all parties given notice [~~under~~] pursuant
5 to Subsection C of this section shall have the opportunity to
6 present evidence and to cross-examine witnesses. At the
7 hearing, the department shall show that it has made reasonable
8 effort to implement any treatment plan approved by the court in
9 its dispositional order and shall present a treatment plan
10 consistent with the purposes of the Children's Code for any
11 period of extension of the dispositional order. The respondent
12 shall demonstrate to the court that efforts to comply with the
13 treatment plan approved by the court in its dispositional order
14 and efforts to maintain contact with the child were diligent
15 and made in good faith. The court shall determine the extent
16 of compliance with the treatment plan and whether progress is
17 being made toward establishing a stable and permanent placement
18 for the child.

19 E. The Rules of Evidence shall not apply to
20 hearings held pursuant to this section. The court may admit
21 testimony by any person given notice of the hearing who has
22 information about the status of the child or the status of the
23 treatment plan.

24 F. At the conclusion of any hearing held pursuant
25 to this section, the court shall make findings of fact and

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1 conclusions of law.

2 G. When the child is an Indian child, the court
3 shall determine during review of a dispositional order whether
4 the placement preferences set forth in the federal Indian Child
5 Welfare Act of 1978 or the placement preferences of the child's
6 Indian tribe were followed and whether the child's treatment
7 plan provides for maintaining the child's cultural ties. When
8 placement preferences have not been followed, good cause for
9 noncompliance shall be clearly stated and supported.

10 H. Based on its findings at a judicial review
11 hearing held pursuant to Subsection B of this section, the
12 court shall order one of the following dispositions:

13 (1) dismiss the action and return the child to
14 his parent without supervision if the court finds that
15 conditions in the home that led to abuse have been corrected
16 and it is now safe for the return of the abused child;

17 (2) permit the child to remain with his
18 parent, guardian or custodian subject to those conditions and
19 limitations the court may prescribe, including protective
20 supervision of the child by the department;

21 (3) return the child to his parent and place
22 the child under the protective supervision of the department;

23 (4) transfer or continue legal custody of the
24 child to:

25 (a) the noncustodial parent, if that is

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1 found to be in the child's best interests;

2 (b) a relative or other individual who,
3 after study by the department or other agency designated by the
4 court, is found by the court to be qualified to receive and
5 care for the child and is appointed as a permanent guardian of
6 the child; or

7 (c) the department, subject to the
8 provisions of Paragraph (6) of this subsection;

9 (5) continue the child in the legal custody of
10 the department with or without any required parental
11 involvement in a treatment plan. Reasonable efforts shall be
12 made to preserve and reunify the family, with the paramount
13 concern being the child's health and safety unless the court
14 finds that such efforts are not required. The court may
15 determine that reasonable efforts are not required to be made
16 when the court finds that:

17 (a) the efforts would be futile; or

18 (b) the parent, guardian or custodian
19 has subjected the child to aggravated circumstances [~~or~~

20 ~~(c) the parental rights of the parent to~~
21 ~~a sibling of the child have been terminated involuntarily];~~

22 (6) make additional orders regarding the
23 treatment plan or placement of the child to protect the child's
24 best interests if the court determines the department has
25 failed in implementing any material provision of the treatment

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1 plan or abused its discretion in the placement or proposed
2 placement of the child; or

3 (7) if during a judicial review the court
4 finds that the child's parent, guardian or custodian has not
5 complied with the court-ordered treatment plan, the court may
6 order:

7 (a) the child's parent, guardian or
8 custodian to show cause why he should not be held in contempt
9 of court; or

10 (b) a hearing on the merits of
11 terminating parental rights.

12 I. Dispositional orders entered pursuant to this
13 section shall remain in force for a period of six months,
14 except for orders that provide for transfer of the child to the
15 child's noncustodial parent or to a permanent guardian.

16 J. The report of the local substitute care review
17 board submitted to the court pursuant to Subsection B of this
18 section shall become a part of the child's permanent court
19 record.

20 K. When the court determines, pursuant to Paragraph
21 (5) of Subsection H of this section, that no reasonable efforts
22 at reunification are required, the court shall conduct, within
23 thirty days, a permanency hearing as described in Section
24 32A-4-25.1 NMSA 1978. Reasonable efforts shall be made to
25 place the child in a timely manner in accordance with the

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1 permanency plan and to complete whatever steps are necessary to
2 finalize the permanent placement of the child."

3 Section 50. Section 32A-4-25.1 NMSA 1978 (being Laws
4 1997, Chapter 34, Section 8) is amended to read:

5 "32A-4-25.1. PERMANENCY HEARINGS-- ~~[REBUTTABLE~~
6 ~~PRESUMPTIONS]~~ PERMANENCY REVIEW HEARINGS. --

7 A. A permanency hearing shall be commenced within
8 six months of the initial judicial review of ~~[the]~~ a child's
9 dispositional order or within twelve months of a child entering
10 foster care pursuant to Subsection E of this section, whichever
11 occurs first. Prior to the initial permanency hearing, all
12 parties to the hearing shall attend a mandatory meeting and
13 attempt to settle issues attendant to the permanency hearing
14 and develop a proposed treatment plan that serves the child's
15 best interest. Prior to the initial permanency hearing, the
16 department shall submit a progress report regarding the child
17 to the local substitute care review board for that judicial
18 district. The local substitute care review board may review
19 the child's dispositional order, any continuation of that order
20 and the department's progress report and report its findings
21 and recommendations to the court.

22 B. ~~[During a permanency hearing, there shall be a~~
23 ~~rebuttable presumption that the child's best interest will be~~
24 ~~served by returning the child to his parent, guardian or~~
25 ~~eustodian.]~~ At the permanency hearing, all parties shall have

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1 the opportunity to present evidence and to cross-examine
2 witnesses. At the conclusion of the permanency hearing, the
3 court shall ~~[determine if sufficient evidence was presented to~~
4 ~~rebut the presumption.]~~

5 ~~C. If insufficient evidence is presented to rebut,~~
6 ~~by a preponderance of the evidence, the presumption set forth~~
7 ~~in Subsection B of this section, the court shall order one of~~
8 ~~the following dispositions:~~

9 (1) ~~dismiss the case and return the child to~~
10 ~~his parent, guardian or custodian; or~~

11 (2) ~~return the child to his parent, guardian~~
12 ~~or custodian, subject to those conditions and limitations the~~
13 ~~court may prescribe, including protective supervision of the~~
14 ~~child by the department and continuation of the treatment plan~~
15 ~~for not more than six months.~~

16 ~~D. If sufficient evidence is presented to rebut, by~~
17 ~~a preponderance of the evidence, the presumption set forth in~~
18 ~~Subsection B of this section, the court shall order that the~~
19 ~~child remain in the legal custody of the department and make~~
20 ~~additional orders regarding the treatment plan. Within three~~
21 ~~months of a permanency hearing order issued pursuant to this~~
22 ~~subsection, if a motion to terminate parental rights or appoint~~
23 ~~a permanent guardian has not been filed or if the child's~~
24 ~~permanency plan has not been formally changed to provide for~~
25 ~~emancipation of the child, a subsequent permanency hearing~~

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1 ~~shall be commenced.~~

2 ~~E. During a subsequent permanency hearing, there~~
3 ~~shall be a rebuttable presumption that the child's best~~
4 ~~interest will be served by changing the child's permanency plan~~
5 ~~to provide for adoption of the child, emancipation of the~~
6 ~~child, permanent guardianship for the child or long-term foster~~
7 ~~care for the child. At the hearing, all parties shall have the~~
8 ~~opportunity to present evidence and cross-examine witnesses.~~
9 ~~At the conclusion of the hearing, the court shall determine if~~
10 ~~sufficient evidence was presented to rebut the presumption.~~

11 ~~F. If insufficient evidence is presented to rebut,~~
12 ~~by a preponderance of the evidence, the presumption set forth~~
13 ~~in Subsection E of this section, the court shall order:~~

14 ~~(1) the department to change the child's~~
15 ~~permanency plan to provide for adoption of the child,~~
16 ~~emancipation of the child, permanent guardianship for the child~~
17 ~~or long-term foster care for the child; and~~

18 ~~(2) that additional efforts to reunite the~~
19 ~~child and his parent shall not be attempted.~~

20 ~~G. If sufficient evidence is presented to rebut, by~~
21 ~~a preponderance of the evidence, the presumption set forth in~~
22 ~~Subsection E of this section, the court shall order one of the~~
23 ~~following dispositions:~~

24 ~~(1) dismiss the case and return the child to~~
25 ~~his parent, guardian or custodian; or~~

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1 ~~(2) return the child to his parent, guardian~~
2 ~~or custodian, subject to those conditions and limitations the~~
3 ~~court may prescribe, including protective supervision of the~~
4 ~~child by the department and continuation of the treatment plan~~
5 ~~for not more than six months]~~ order one of the following
6 permanency plans for the child:

7 (1) reunification;

8 (2) placement for adoption after the parents'
9 rights have been relinquished or terminated or after a motion
10 has been filed to terminate parental rights;

11 (3) placement with a person who will be the
12 child's permanent guardian;

13 (4) placement in the legal custody of the
14 department with the child placed in the home of a fit and
15 willing relative; or

16 (5) placement in the legal custody of the
17 department under a planned permanent living arrangement,
18 provided that there is substantial evidence that none of the
19 above plans is appropriate for the child.

20 C. If the court adopts a permanency plan of
21 reunification, the court shall adopt a plan for transitioning
22 the child home and schedule a permanency review hearing within
23 three months. If the child is reunified, the subsequent
24 hearing may be vacated.

25 D. At the permanency review hearing, all parties

1 and the child's guardian ad litem shall have the opportunity to
2 present evidence and cross-examine witnesses. Based on the
3 evidence, the court shall:

4 (1) change the plan from reunification to one
5 of the alternative plans provided in Subsection B of this
6 section;

7 (2) dismiss the case and return custody of the
8 child to his parent, guardian or custodian; or

9 (3) return the child to the custody of his
10 parent, guardian or custodian, subject to any conditions or
11 limitations as the court may prescribe, including protective
12 supervision of the child by the department and continuation of
13 the treatment plan for not more than six months, after which
14 the case shall be dismissed. The department may seek removal
15 of a child from the home by obtaining an order in the pending
16 case or by seeking emergency removal under Section 32A-4-6 NMSA
17 1978 during the period of protective supervision if the child's
18 best interest requires such action. When a child is removed in
19 this situation, a permanency hearing shall be scheduled within
20 thirty days of the child coming back into the department's
21 legal custody.

22 E. The court shall hold a permanency hearing and
23 adopt a permanency plan for a child within twelve months of the
24 child entering foster care. For purposes of this section, a
25 child shall be considered to have entered foster care on the

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1 earlier of:

2 (1) the date of the first judicial finding
3 that the child has been abused or neglected; or

4 (2) sixty days after the date on which the
5 child was removed from the home.

6 F. The court shall hold permanency hearings every
7 twelve months when a child is in the legal custody of the
8 department.

9 ~~[H.]~~ G. The children's court attorney shall give
10 notice to all parties, the child's guardian ad litem, the
11 child's CASA, a contractor administering the local substitute
12 care review board and the child's foster parent or substitute
13 care provider of the time, place and purpose of any permanency
14 hearing or permanency review hearing held pursuant to this
15 section.

16 ~~[F.]~~ H. The rules of evidence shall not apply to
17 permanency hearings. The court may admit testimony by any
18 person given notice of the permanency hearing who has
19 information about the status of the child or the status of the
20 treatment plan. All testimony shall be subject to cross-
21 examination. "

22 Section 51. Section 32A-4-28 NMSA 1978 (being Laws 1993,
23 Chapter 77, Section 122, as amended) is amended to read:

24 "32A-4-28. TERMINATION OF PARENTAL RIGHTS--ADOPTION
25 DECREE. --

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1 A. In proceedings to terminate parental rights, the
2 court shall give primary consideration to the physical, mental
3 and emotional welfare and needs of the child, including the
4 likelihood of the child being adopted if parental rights are
5 terminated.

6 B. The court shall terminate parental rights with
7 respect to a child when:

8 (1) there has been an abandonment of the child
9 by his parents;

10 (2) the child has been a neglected or abused
11 child as defined in the Abuse and Neglect Act and the court
12 finds that the conditions and causes of the neglect and abuse
13 are unlikely to change in the foreseeable future despite
14 reasonable efforts by the department or other appropriate
15 agency to assist the parent in adjusting the conditions that
16 render the parent unable to properly care for the child. The
17 court may find in some cases that efforts by the department or
18 another agency are unnecessary, when:

19 (a) there is a clear showing that the
20 efforts would be futile; or

21 (b) the parent has subjected the child
22 to aggravated circumstances; or

23 ~~[(c) the parental rights of the parent~~
24 ~~to a sibling of the child have been terminated involuntarily;~~
25 ~~or]~~

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1 (3) the child has been placed in the care of
2 others, including care by other relatives, either by a court
3 order or otherwise and the following conditions exist:

4 (a) the child has lived in the home of
5 others for an extended period of time;

6 (b) the parent-child relationship has
7 disintegrated;

8 (c) a psychological parent-child
9 relationship has developed between the substitute family and
10 the child;

11 (d) if the court deems the child of
12 sufficient capacity to express a preference, the child no
13 longer prefers to live with the natural parent;

14 (e) the substitute family desires to
15 adopt the child; and

16 (f) a presumption of abandonment created
17 by the conditions described in Subparagraphs (a) through (e) of
18 this paragraph has not been rebutted.

19 C. A finding by the court that all of the
20 conditions set forth in Subparagraphs (a) through (f) of
21 Paragraph (3) of Subsection B of this section exist shall
22 create a rebuttable presumption of abandonment.

23 D. The department shall not file a motion, and
24 shall not join a motion filed by another party, to terminate
25 parental rights when the sole factual basis for the motion is

1 that a child's parent is incarcerated.

2 E. The termination of parental rights involving a
3 child subject to the federal Indian Child Welfare Act of 1978
4 shall comply with the requirements of that act.

5 F. If the court finds that parental rights should
6 be terminated; that the requirements for the adoption of a
7 child have been satisfied; that the prospective adoptive parent
8 is a party to the action; and that good cause exists to waive
9 the filing of a separate petition for adoption, the court may
10 proceed to grant adoption of the child, absent an appeal of the
11 termination of parental rights. The court shall not waive any
12 time requirements set forth in the Adoption Act unless the
13 termination of parental rights occurred pursuant to the
14 provisions of Paragraph (3) of Subsection B of this section.
15 The court may enter a decree of adoption only after finding
16 that the party seeking to adopt the child has satisfied all of
17 the requirements set forth in the Adoption Act. Unless
18 otherwise stipulated by all parties, an adoption decree shall
19 take effect sixty days after the termination of parental
20 rights, to allow the department sufficient time to provide
21 counseling for the child and otherwise prepare the child for
22 the adoption. The adoption decree shall conform to the
23 requirements of the Adoption Act and shall have the same force
24 and effect as other adoption decrees entered pursuant to that
25 act. The court clerk shall assign an adoption case number to

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1 the adoption decree. "

2 Section 52. Section 32A-4-29 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 123, as amended) is amended to read:

4 "32A-4-29. TERMINATION PROCEDURE. --

5 A. A motion to terminate parental rights may be
6 filed at any stage of the abuse or neglect proceeding [The
7 proceeding may be initiated by any of the following:--

8 (1) ~~the department;~~

9 (2) ~~a licensed child placement agency; or~~

10 (3) ~~any other person having a legitimate~~
11 ~~interest in the matter, including the child's guardian ad~~
12 ~~litem, a petitioner for adoption, a foster parent or a relative~~
13 ~~of the child] by a party to the proceeding.~~

14 B. The motion for termination of parental rights
15 [~~shall be signed, verified by the moving party and filed with~~
16 ~~the court. The motion]~~ shall set forth:

17 (1) the date, place of birth and marital
18 status of the child, if known;

19 (2) the grounds for termination and the facts
20 and circumstances supporting the grounds for termination;

21 (3) the names and addresses of the persons or
22 authorized agency or agency officer to whom legal custody might
23 be transferred;

24 (4) whether the child resides or has resided
25 with a foster parent who desires to adopt this child;

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1 (5) whether the motion is in contemplation of
2 adoption;

3 (6) the relationship or legitimate interest of
4 the moving party to the child; and

5 (7) whether the child is subject to the
6 federal Indian Child Welfare Act of 1978 and, if so:

7 (a) the tribal affiliations of the
8 child's parents;

9 (b) the specific actions taken by the
10 moving party to notify the parents' tribes and the results of
11 the contacts, including the names, addresses, titles and
12 telephone numbers of the persons contacted. Copies of any
13 correspondence with the tribes shall be attached as exhibits to
14 the petition; and

15 (c) what specific efforts were made to
16 comply with the placement preferences set forth in the federal
17 Indian Child Welfare Act of 1978 or the placement preferences
18 of the appropriate Indian tribes.

19 ~~[C. A parent who has not previously been a party to~~
20 ~~the proceeding shall be named in the motion and shall become a~~
21 ~~party to the proceeding unless the court determines that the~~
22 ~~parent has not established a protected liberty interest in his~~
23 ~~relationship with the child.~~

24 ~~D.]~~ C. Notice of the filing of the motion,
25 accompanied by a copy of the motion, shall be served by the

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1 moving party on all other parties, the foster parent,
2 preadoptive parent or relative providing care for the child
3 with whom the child is residing, foster parents with whom the
4 child has resided for six months within the previous twelve
5 months, the custodian of the child, any person appointed to
6 represent any party and any other person the court orders.
7 Service shall be in accordance with the [~~Rules of Civil~~
8 ~~Procedure for the District Courts~~] Children's Court Rules for
9 the service of motions [~~in a civil action in this state~~],
10 except that foster parents and attorneys of record in this
11 proceeding shall be served by certified mail. The notice shall
12 state specifically that the person served shall file a written
13 response to the motion within twenty days if the person intends
14 to contest the termination. In any case involving a child
15 subject to the federal Indian Child Welfare Act of 1978, notice
16 shall also be sent by certified mail to the tribes of the
17 child's parents and upon any "Indian custodian" as that term is
18 defined in 25 U.S.C. Section 1903(6). Further notice shall not
19 be required on a parent who has been provided notice previously
20 pursuant to Section 32A-4-17 NMSA 1978 and who failed to make
21 an appearance.

22 [~~E. If the identity or whereabouts of a person~~
23 ~~entitled to service are unknown, the moving party shall file a~~
24 ~~motion for an order granting service by publication supported~~
25 ~~by the affidavit of the moving party or his agent or attorney~~

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1 ~~detailing the efforts made to locate the person entitled to~~
2 ~~service. Upon being satisfied that reasonable efforts to~~
3 ~~locate the person entitled to service have been made and that~~
4 ~~information as to the identity or whereabouts of the person is~~
5 ~~still insufficient to effect service in accordance with the~~
6 ~~Rules of Civil Procedure for the District Courts, the court~~
7 ~~shall order service by publication pursuant to the Rules of~~
8 ~~Civil Procedure for the District Courts.~~

9 F. ~~After a motion for the termination of parental~~
10 ~~rights is filed, the parent shall be advised of the right to~~
11 ~~counsel unless the parent is already represented by counsel.~~
12 ~~Counsel shall be appointed, upon request, for any parent who is~~
13 ~~unable to obtain counsel due to financial reasons or, if in the~~
14 ~~court's discretion, the interests of justice require~~
15 ~~appointment of counsel.~~

16 G. ~~The court shall assure that a guardian ad litem~~
17 ~~represents the child in all proceedings for the termination of~~
18 ~~parental rights.~~

19 H.] D. When a motion to terminate parental rights
20 is filed, the moving party shall request a hearing on the
21 motion. The hearing date shall be at least thirty days, but no
22 more than sixty days, after service is effected upon the
23 parties entitled to service under this section.

24 [H.] E. In any action for the termination of
25 parental rights brought by a party other than the department

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1 and involving a child in the legal custody of the department,
2 the department may:

3 (1) litigate a motion for the termination of
4 parental rights that was initially filed by another party; or

5 (2) move that the motion for the termination
6 of parental rights be found premature and denied.

7 [~~J.~~] F. When a motion to terminate parental rights
8 is filed, the department shall perform concurrent planning.

9 [~~K.~~] G. When a child has been in foster care for
10 not less than fifteen of the previous twenty-two months, the
11 department shall file a motion to terminate parental rights,
12 unless:

13 (1) a parent has made substantial progress
14 toward eliminating the problem that caused the child's
15 placement in foster care; it is likely that the child will be
16 able to safely return to the parent's home within three months;
17 and the child's return to the parent's home will be in the
18 child's best interests;

19 (2) the child has a close and positive
20 relationship with a parent and a permanent plan that does not
21 include termination of parental rights will provide the most
22 secure and appropriate placement for the child;

23 (3) the child is [~~thirteen~~] fourteen years of
24 age or older, is firmly opposed to termination of parental
25 rights and is likely to disrupt an attempt to place him with an

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1 adoptive family;

2 (4) a parent is terminally ill, but in
3 remission, and does not want his parental rights to be
4 terminated; provided that the parent has designated a guardian
5 for his child;

6 (5) the child is not capable of functioning if
7 placed in a family setting. In such a case, the court shall
8 reevaluate the status of the child every ninety days unless
9 there is a final court determination that the child cannot be
10 placed in a family setting;

11 (6) grounds do not exist for termination of
12 parental rights;

13 (7) the child is an unaccompanied, refugee
14 minor and the situation regarding the child involves
15 international legal issues or compelling foreign policy issues;
16 or

17 (8) adoption is not an appropriate plan for
18 the child.

19 [~~L.~~] H. For purposes of this section, a child shall
20 be considered to have entered foster care on the earlier of:

21 (1) the date of the first judicial finding
22 that the child has been abused or neglected; or

23 (2) the date that is sixty days after the date
24 on which the child was removed from the home.

25 [~~M.~~] I. The grounds for any attempted termination

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1 shall be proved by clear and convincing evidence. In any
2 proceeding involving a child subject to the federal Indian
3 Child Welfare Act of 1978, the grounds for any attempted
4 termination shall be proved beyond a reasonable doubt and shall
5 meet the requirements set forth in 25 U.S.C. Section 1912(f).

6 [N-] J. When the court terminates parental rights,
7 it shall appoint a custodian for the child and fix
8 responsibility for the child's support.

9 [Ø-] K. In any termination proceeding involving a
10 child subject to the federal Indian Child Welfare Act of 1978,
11 the court shall in any termination order make specific findings
12 that the requirements of that act have been met.

13 [P-] L. A judgment of the court terminating
14 parental rights divests the parent of all legal rights and
15 privileges and dispenses with both the necessity for the
16 consent to or receipt of notice of any subsequent adoption
17 proceeding concerning the child. A judgment of the court
18 terminating parental rights shall not affect the child's rights
19 of inheritance from and through the child's biological
20 parents. "

21 Section 53. Section 32A-4-30 NMSA 1978 (being Laws 1993,
22 Chapter 77, Section 124) is amended to read:

23 "32A-4-30. [~~ATTORNEYS'~~] ATTORNEY FEES. --The court may
24 order the department to pay [~~attorneys'~~] attorney fees for the
25 child's guardian ad litem or attorney if:

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1 A. the child is in the legal custody of the
2 department;

3 B. the child's guardian ad litem or the child,
4 through the child's attorney:

5 (1) requests in writing that the department
6 move for the termination of parental rights;

7 (2) gives the department written notice that
8 if the department does not move for termination of parental
9 rights, the guardian ad litem or the child, through the child's
10 attorney, intends to move for the termination of parental
11 rights and seek an award of [~~attorneys'~~] attorney fees;

12 (3) successfully moves for the termination of
13 parental rights; and

14 (4) applies to the court for an award of
15 [~~attorneys'~~] attorney fees; and

16 C. the department refuses to litigate the motion
17 for the termination of parental rights or fails to act in a
18 timely manner."

19 Section 54. Section 32A-4-31 NMSA 1978 (being Laws 1993,
20 Chapter 77, Section 125) is amended to read:

21 "32A-4-31. PERMANENT GUARDIANSHIP OF A CHILD. --

22 A. In proceedings for permanent guardianship, the
23 court shall give primary consideration to the physical, mental
24 and emotional welfare and needs of the child. Permanent
25 guardianship vests in the guardian all rights and

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1 responsibilities of a parent, other than those rights and
2 responsibilities of the natural or adoptive parent, if any, set
3 forth in the decree of permanent guardianship.

4 B. Any adult, including a relative or foster
5 parent, may be considered as a permanent guardian, provided
6 that the department grants consent to the guardianship if the
7 child is in the ~~[department's custody]~~ legal custody of the
8 department. An agency or institution may not be a permanent
9 guardian. The court shall appoint a person nominated by the
10 child, if the minor is fourteen years of age or older, unless
11 the court finds the appointment contrary to the best interests
12 of the child.

13 C. The court may establish a permanent guardianship
14 between a child and the guardian when the prospective
15 guardianship is in the child's best interest and when:

16 (1) the child has been adjudicated as an
17 abused or neglected child;

18 (2) the department has made reasonable efforts
19 to reunite the parent and child and further efforts by the
20 department would be unproductive;

21 (3) reunification of the parent and child is
22 not in the child's best interests because the parent continues
23 to be unwilling or unable to properly care for the child; and

24 (4) the likelihood of the child being adopted
25 is remote or it is established that termination of parental

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1 rights is not in the child's best interest."

2 Section 55. Section 32A-4-32 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 126, as amended) is amended to read:

4 "32A-4-32. PERMANENT GUARDIANSHIP--PROCEDURE. --

5 A. A motion for permanent guardianship may be filed
6 by any party.

7 B. [~~Any application~~] A motion for permanent
8 guardianship shall [~~be signed and verified by the petitioner,~~
9 ~~filed with the court and~~] set forth:

10 (1) the date, place of birth and marital
11 status of the child, if known;

12 (2) the facts and circumstances supporting the
13 [~~ground~~] grounds for permanent guardianship;

14 (3) the name and address of the prospective
15 guardian and a statement that the person agrees to accept the
16 duties and responsibilities of guardianship;

17 (4) the basis for the court's jurisdiction;

18 (5) the relationship of the child to the
19 petitioner and the prospective guardian; and

20 (6) whether the child is subject to the
21 federal Indian Child Welfare Act of 1978 and, if so:

22 (a) the tribal affiliations of the
23 child's parents;

24 (b) the specific actions taken by the
25 petitioner to notify the parents' tribe and the results of the

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1 contacts, including the names, addresses, titles and telephone
2 numbers of the persons contacted. Copies of any correspondence
3 with the tribes shall be attached as exhibits to the petition;
4 and

5 (c) what specific efforts were made to
6 comply with the placement preferences set forth in the federal
7 Indian Child Welfare Act of 1978 or the placement preferences
8 of the appropriate Indian tribes.

9 C. If the [~~petition~~] motion is not filed by the
10 prospective guardian, the [~~petition~~] motion shall be verified
11 by the prospective guardian.

12 D. Notice of the filing of the motion, accompanied
13 by a copy of the motion, shall be served by the moving party on
14 any parent who has not previously been made a party to the
15 proceeding, the parents of the child, foster parents with whom
16 the child is residing, the foster parent, preadoptive parent or
17 relative providing care for the child with whom the child has
18 resided for six months, the child's custodian, the department,
19 any person appointed to represent any party, including the
20 child's guardian ad litem, and any other person the court
21 orders provided with notice. Service shall be in accordance
22 with the [~~Rules of Civil Procedure for the District Courts~~]
23 Children's Court Rules for the service of motions. [~~in a civil~~
24 ~~action in this state. The notice shall state specifically that~~
25 ~~the person served shall file a written response to the~~

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1 ~~application within twenty days if the person intends to contest~~
2 ~~the guardianship.~~

3 ~~E. When the child is an Indian child, subject to]~~
4 In a case involving a child subject to the federal Indian Child
5 Welfare Act of 1978, notice shall also be [served upon] sent by
6 certified mail to the Indian tribes of the child's parents and
7 [upon] to any "Indian custodian" as that term is defined in
8 25 U. S. C. Section 1903(6). Further notice shall not be
9 required to a parent who has been provided notice previously
10 pursuant to Section 32A-4-17 NMSA 1978 and who failed to make
11 an appearance.

12 [F.] E. The grounds for permanent guardianship
13 shall be proved by clear and convincing evidence. The grounds
14 for permanent guardianship shall be proved beyond a reasonable
15 doubt and meet the requirements of 25 U. S. C. Section 1912(f) in
16 any proceeding involving a child subject to the federal Indian
17 Child Welfare Act of 1978.

18 [G.] E. A judgment of the court vesting permanent
19 guardianship with an individual divests the biological or
20 adoptive parent of legal custody or guardianship of the child,
21 but is not a termination of the parent's rights. A child's
22 inheritance rights from and through the child's biological or
23 adoptive parents are not affected by this proceeding.

24 [H.] G. Upon a finding that grounds exist for a
25 permanent guardianship, the court may incorporate into the

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1 final order provisions for visitation with the natural parents,
2 siblings or other relatives of the child and any other
3 provision necessary to rehabilitate the child or provide for
4 the child's continuing safety and well-being.

5 ~~[I.]~~ H. The court shall retain jurisdiction to
6 enforce its judgment of permanent guardianship.

7 ~~[J.]~~ I. Any party ~~[to the abuse or neglect~~
8 ~~proceeding, the child or a parent of the child]~~ may make a
9 motion for revocation of the order granting guardianship when
10 there is a significant change of circumstances, including:

11 (1) the child's parent is able and willing to
12 properly care for the child; or

13 (2) the child's guardian is unable to properly
14 care for the child.

15 ~~[K.]~~ J. The court shall appoint a guardian ad litem
16 for the child in all proceedings for the revocation of
17 permanent guardianship.

18 ~~[L.]~~ K. The court may revoke the order granting
19 guardianship when a significant change of circumstances has
20 been proven by clear and convincing evidence and it is in the
21 child's best interests to revoke the order granting
22 guardianship. "

23 Section 56. Section 32A-4-33 NMSA 1978 (being Laws 1993,
24 Chapter 77, Section 127) is amended to read:

25 "32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY. --

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1 A. All records or information concerning a party to
2 a neglect or abuse proceeding, including social records,
3 diagnostic ~~[evaluation]~~ evaluations, psychiatric or
4 psychological reports, videotapes, transcripts and audio
5 recordings of a child's statement of abuse or medical reports
6 ~~[that are in the possession of the court or the department]~~
7 incident to or obtained as ~~[the]~~ a result of a neglect or abuse
8 proceeding or that were produced or obtained during an
9 investigation in anticipation of or incident to a neglect or
10 abuse proceeding shall be confidential and closed to the
11 public.

12 B. The records described in Subsection A of this
13 section shall be ~~[open to inspection only by]~~ disclosed only to
14 the parties and:

- 15 (1) court personnel;
- 16 (2) court appointed special advocates;
- 17 (3) the child's guardian ad litem;
- 18 (4) the attorney representing the child in an
19 abuse or neglect action, a delinquency action or any other
20 action under the Children's Code;

21 ~~[(4)]~~ (5) department personnel;

22 ~~[(5)]~~ (6) any local substitute care review
23 board or any agency contracted to implement local substitute
24 care review boards;

25 ~~[(6)]~~ (7) law enforcement officials, except

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1 when use immunity is granted pursuant to Section [~~32-4-11~~]

2 32A-4-11 NMSA 1978;

3 [~~(7)~~] (8) district attorneys, except when use
4 immunity is granted pursuant to Section [~~32-4-11~~] 32A-4-11 NMSA
5 1978;

6 [~~(8)~~] (9) any state government social services
7 agency in any state;

8 [~~(9)~~] (10) those persons or entities of an
9 Indian tribe specifically authorized to inspect the records
10 pursuant to the federal Indian Child Welfare Act of 1978 or any
11 regulations promulgated thereunder;

12 [~~(10)~~] (11) a foster parent, if the records
13 are those of a child currently placed with that foster parent
14 or of a child being considered for placement with that foster
15 parent and the records concern the social, medical,
16 psychological or educational needs of the child;

17 [~~(11)~~] (12) school personnel involved with the
18 child if the records concern the child's social or educational
19 needs;

20 [~~(12)~~] (13) health care or mental health
21 professionals involved in the evaluation or treatment of the
22 child, the child's parents, guardian, custodian or other family
23 members;

24 [~~(13)~~] (14) protection and advocacy
25 representatives pursuant to the federal Developmental

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1 Disabilities Assistance and Bill of Rights Act and the federal
2 Protection and Advocacy for Mentally Ill Individuals Amendments
3 Act of 1991;

4 [~~(14)~~] (15) children's safehouse organizations
5 conducting investigatory interviews of children on behalf of a
6 law enforcement agency or the department; and

7 [~~(15)~~] (16) any other person or entity, by
8 order of the court, having a legitimate interest in the case or
9 the work of the court.

10 C. A parent, guardian or legal custodian whose
11 child has been the subject of an investigation of abuse or
12 neglect where no petition has been filed shall have the right
13 to inspect any medical report, psychological evaluation, law
14 enforcement reports or other investigative or diagnostic
15 evaluation; provided that any identifying information related
16 to the reporting party or any other party providing information
17 shall be deleted. The parent, guardian or legal custodian
18 shall also have the right to the results of the investigation
19 and the right to petition the court for full access to all
20 department records and information except those records and
21 information the department finds would be likely to endanger
22 the life or safety of any person providing information to the
23 department.

24 D. Whoever intentionally and unlawfully releases
25 any information or records closed to the public pursuant to the

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1 Abuse and Neglect Act or releases or makes other unlawful use
2 of records in violation of that act is guilty of a petty
3 misdemeanor and shall be sentenced pursuant to the provisions
4 of Section 31-19-1 NMSA 1978.

5 E. When a child's death is allegedly caused by
6 abuse or neglect, the department may release information about
7 the case after consultation with and the consent of the
8 district attorney.

9 F. The department shall promulgate rules for
10 implementing disclosure of records pursuant to this section and
11 in compliance with state and federal law and the Children's
12 Court Rules. "

13 Section 57. Section 32A-5-3 NMSA 1978 (being Laws 1993,
14 Chapter 77, Section 130, as amended by Laws 2003, Chapter 294,
15 Section 2 and by Laws 2003, Chapter 321, Section 2) is amended
16 to read:

17 "32A-5-3. DEFINITIONS.--As used in the Adoption Act:

18 A. "accrediting entity" means an entity that has
19 entered into an agreement with the United States secretary of
20 state pursuant to the federal Intercountry Adoption Act of 2000
21 and regulations adopted by the United States secretary of state
22 pursuant to that act, to accredit agencies and approve persons
23 who provide adoption services related to convention adoptions;

24 B. "adoptee" means a person who is the subject of
25 an adoption petition;

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C. "adoption service" means:

- (1) identifying a child for adoption and arranging the adoption of the child;
 - (2) securing termination of parental rights to a child or consent to adoption of the child;
 - (3) performing a background study on a child and reporting on the study;
 - (4) performing a home study on a prospective adoptive parent and reporting on the study;
 - (5) making determinations regarding the best interests of a child and the appropriateness of an adoptive placement for the child;
 - (6) performing post-placement monitoring of a child until an adoption is final; and
 - (7) when there is a disruption before an adoption of a child is final, assuming custody of the child and providing or facilitating the provision of child care or other social services for the child pending an alternative placement of the child;
- D. "agency" means a person certified, licensed or otherwise specially empowered by law to place a child in a home in this or any other state for the purpose of adoption;
- E. "agency adoption" means an adoption when the adoptee is in the custody of an agency prior to placement;
- F. "acknowledged father" means a father who:

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1 (1) acknowledges paternity of the adoptee
2 pursuant to the putative father registry, as provided for in
3 Section 32A-5-20 NMSA 1978;

4 (2) is named, with his consent, as the
5 adoptee's father on the adoptee's birth certificate;

6 (3) is obligated to support the adoptee under
7 a written voluntary promise or pursuant to a court order; or

8 (4) has openly held out the adoptee as his own
9 child by establishing a custodial, personal or financial
10 relationship with the adoptee as follows:

11 (a) for an adoptee under six months old
12 at the time of placement: 1) has initiated an action to
13 establish paternity; 2) is living with the adoptee at the time
14 the adoption petition is filed; 3) has lived with the mother a
15 minimum of ninety days during the two-hundred-eighty-day-period
16 prior to the birth or placement of the adoptee; 4) has lived
17 with the adoptee within the ninety days immediately preceding
18 the adoptive placement; 5) has provided reasonable and fair
19 financial support to the mother during the pregnancy and in
20 connection with the adoptee's birth in accordance with his
21 means and when not prevented from doing so by the person or
22 authorized agency having lawful custody of the adoptee or the
23 adoptee's mother; 6) has continuously paid child support to the
24 mother since the adoptee's birth in an amount at least equal to
25 the amount provided in Section 40-4-11.1 NMSA 1978, or has

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1 brought current any delinquent child support payments; or 7)
2 any other factor the court deems necessary to establish a
3 custodial, personal or financial relationship with the adoptee;
4 or

5 (b) for an adoptee over six months old
6 at the time of placement: 1) has initiated an action to
7 establish paternity; 2) has lived with the adoptee within the
8 ninety days immediately preceding the adoptive placement; 3)
9 has continuously paid child support to the mother since the
10 adoptee's birth in an amount at least equal to the amount
11 provided in Section 40-4-11.1 NMSA 1978, or is making
12 reasonable efforts to bring delinquent child support payments
13 current; 4) has contact with the adoptee on a monthly basis
14 when physically and financially able and when not prevented by
15 the person or authorized agency having lawful custody of the
16 adoptee; or 5) has regular communication with the adoptee, or
17 with the person or agency having the care or custody of the
18 adoptee, when physically and financially unable to visit the
19 adoptee and when not prevented from doing so by the person or
20 authorized agency having lawful custody of the adoptee;

21 G. "alleged father" means an individual whom the
22 biological mother has identified as the biological father, but
23 the individual has not acknowledged paternity or registered
24 with the putative father registry as provided for in Section
25 32A-5-20 NMSA 1978;

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H. "consent" means a document:

(1) signed by a biological parent whereby the parent grants consent to the adoption of the parent's child by another; ~~[or]~~

(2) whereby the department or an agency grants its consent to the adoption of a child in its custody; or

(3) signed by the adoptee if the child is fourteen years of age or older;

I. "convention adoption" means:

(1) an adoption by a United States resident of a child who is a resident of a foreign country that is a party to the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption; or

(2) an adoption by a resident of a foreign country that is a party to the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption of a child who is a resident of the United States;

J. "counselor" means a person certified by the department to conduct adoption counseling in independent adoptions;

K. "department adoption" means an adoption when the child is in the custody of the department;

L. "foreign born child" means any child not born in the United States who is not a citizen of the United States;

~~[L.]~~ M. "former parent" means a parent whose

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1 parental rights have been terminated or relinquished;

2 ~~[M-]~~ N. "full disclosure" means mandatory and
3 continuous disclosure by the investigator, agency, department
4 or petitioner throughout the adoption proceeding and after
5 finalization of the adoption of all known, nonidentifying
6 information regarding the adoptee, including:

- 7 (1) health history;
- 8 (2) psychological history;
- 9 (3) mental history;
- 10 (4) hospital history;
- 11 (5) medication history;
- 12 (6) genetic history;
- 13 (7) physical descriptions;
- 14 (8) social history;
- 15 (9) placement history; and
- 16 (10) education;

17 ~~[N-]~~ O. "independent adoption" means an adoption
18 when the child is not in the custody of the department or an
19 agency;

20 ~~[O-]~~ P. "investigator" means an individual
21 certified by the department to conduct pre-placement studies
22 and post-placement reports;

23 ~~[P-]~~ Q. "office" means a place for the regular
24 transaction of business or performance of particular services;

25 ~~[Q-]~~ R. "parental rights" means all rights of a

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1 parent with reference to a child, including parental right to
2 control, to withhold consent to an adoption or to receive
3 notice of a hearing on a petition for adoption;

4 [R-] S. "placement" means the selection of a family
5 for an adoptee or matching of a family with an adoptee and
6 physical transfer of the adoptee to the family in all adoption
7 proceedings, except in adoptions filed pursuant to Paragraphs
8 (1) and (2) of Subsection C of Section 32A-5-12 NMSA 1978, in
9 which case placement occurs when the parents consent to the
10 adoption, parental rights are terminated or parental consent is
11 implied;

12 [S-] T. "post-placement report" means a written
13 evaluation of the adoptive family and the adoptee after the
14 adoptee is placed for adoption;

15 [F-] U. "pre-placement study" means a written
16 evaluation of the adoptive family, the adoptee's biological
17 family and the adoptee;

18 [U-] V. "presumed father" means:

19 (1) the husband of the biological mother at
20 the time the adoptee was born;

21 (2) an individual who was married to the
22 mother and either the adoptee was born during the term of the
23 marriage or the adoptee was born within three hundred days
24 after the marriage was terminated by death, annulment,
25 declaration of invalidity or divorce; or

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1 (3) before the adoptee's birth, an individual
2 who attempted to marry the adoptee's biological mother by a
3 marriage solemnized in apparent compliance with law, although
4 the attempted marriage is or could be declared invalid and if
5 the attempted marriage:

6 (a) could be declared invalid only by a
7 court, the adoptee was born during the attempted marriage or
8 within three hundred days after its termination by death,
9 annulment, declaration of invalidity or divorce; or

10 (b) is invalid without a court order,
11 the adoptee was born within three hundred days after the
12 termination of cohabitation;

13 [~~V.~~] W. "record" means any petition, affidavit,
14 consent or relinquishment form, transcript or notes of
15 testimony, deposition, power of attorney, report, decree,
16 order, judgment, correspondence, document, photograph, invoice,
17 receipt, certificate or other printed, written, videotaped or
18 tape-recorded material pertaining to an adoption proceeding;

19 [~~W.~~] X. "relinquishment" means the document by
20 which a parent relinquishes parental rights to the department
21 or an agency to enable placement of the parent's child for
22 adoption;

23 [~~X.~~] Y. "resident" means a person who, prior to
24 filing an adoption petition, has lived in the state for at
25 least six months immediately preceding filing of the petition

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1 for adoption or a person who has become domiciled in the state
2 by establishing legal residence with the intention of
3 maintaining the residency indefinitely; and

4 [~~Y.~~] Z. "stepparent adoption" means an adoption of
5 the adoptee by the adoptee's stepparent when the adoptee has
6 lived with the stepparent for at least one year following the
7 marriage of the stepparent to the custodial parent. "

8 Section 58. Section 32A-5-7 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 134, as amended) is amended to read:

10 "32A-5-7. CLERK OF THE COURT--DUTIES. --

11 A. The clerk of the court shall file pleadings
12 captioned pursuant to the provisions of Section 32A-5-9 NMSA
13 1978. The clerk of the court shall not file incorrectly
14 captioned pleadings.

15 B. The clerk of the court shall mail a copy of the
16 request for placement to the department within one working day
17 of the request for placement being filed with the court. The
18 attorney for the person requesting placement shall provide to
19 the clerk of the court a copy of the request for placement and
20 a stamped envelope addressed to the department as specified in
21 department regulation.

22 C. The clerk of the court shall mail a copy of the
23 petition for adoption within one working day of the petition
24 for adoption being filed with the court. The attorney for the
25 petitioner shall provide to the clerk of the court a copy of

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1 the petition for adoption and a stamped envelope addressed to
2 the department as specified in department regulation.

3 D. The clerk of the court shall mail a copy of the
4 decree of adoption to the department within one working day of
5 the entry of the decree of adoption. The attorney for the
6 petitioner shall provide to the clerk of the court a copy of
7 the decree of adoption and a stamped envelope addressed to the
8 department as specified in department regulation.

9 E. In any adoption involving an Indian child, the
10 clerk of the court shall provide the secretary of the interior
11 with a copy of any decree of adoption or adoptive placement
12 order and other information as required by the federal Indian
13 Child Welfare Act of 1978. The attorney for the petitioner
14 shall provide to the clerk of the court a copy of an adoption
15 decree, an adoptive placement order, any other information
16 required by the federal Indian Child Welfare Act of 1978 and a
17 stamped envelope addressed to the secretary of the interior.

18 F. The clerk of the court shall ~~forward an~~
19 ~~application for a birth certificate in~~ provide a certificate
20 of adoption with an adoptee's new name.

21 G. The attorney for the petitioner shall forward
22 the certificate of adoption provided for in Subsection F of
23 this section as follows:

24 (1) for a person born in the United States, to
25 the appropriate vital statistics office of the place, if known,

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1 where the adoptee was born; or

2 (2) for all other persons, to the state
3 registrar of vital statistics. "

4 Section 59. Section 32A-5-8 NMSA 1978 (being Laws 1993,
5 Chapter 77, Section 135, as amended) is amended to read:

6 "32A-5-8. CONFIDENTIALITY OF RECORDS. --

7 A. Unless the petitioner agrees to be contacted or
8 agrees to the release of the petitioner's identity to the
9 parent and the parent agrees to be contacted or agrees to the
10 release of the parent's identity to the petitioner, the
11 attorneys, the court, the agency and the department shall
12 maintain confidentiality regarding the names of the parties,
13 unless the information is already otherwise known. After the
14 petition is filed and prior to the entry of the decree, the
15 records in adoption proceedings shall be open to inspection
16 only by the attorney for the petitioner, the department or the
17 agency, any attorney appointed as a guardian ad litem for the
18 adoptee, any attorney retained by the adoptee or other persons
19 upon order of the court for good cause shown.

20 B. All records, whether on file with the court, an
21 agency, the department, an attorney or other provider of
22 professional services in connection with an adoption, are
23 confidential and may be disclosed only pursuant to the
24 provisions of the Adoption Act. All information and
25 documentation provided for the purpose of full disclosure is

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1 confidential. Documentation provided for the purpose of full
2 disclosure shall remain the property of the person making full
3 disclosure when a prospective adoptive parent decides not to
4 accept a placement. Immediately upon refusal of the placement,
5 the prospective adoptive parent shall return all full
6 disclosure documentation to the person providing full
7 disclosure. A prospective adoptive parent shall not disclose
8 any confidential information received during the full
9 disclosure process, except as necessary to make a placement
10 decision or to provide information to a child's guardian ad
11 litem or the court.

12 C. All hearings in adoption proceedings shall be
13 confidential and shall be held in closed court without
14 admittance of any person other than parties and their counsel.

15 D. A person who intentionally and unlawfully
16 releases any information or records closed to the public
17 pursuant to the Adoption Act or releases or makes other
18 unlawful use of records in violation of that act is guilty of a
19 petty misdemeanor and shall be sentenced pursuant to the
20 provisions of Section 31-19-1 NMSA 1978.

21 [~~D.~~] E. Prior to the entry of the decree of
22 adoption, the parent consenting to the adoption or
23 relinquishing parental rights to an agency or the department
24 shall execute an affidavit stating whether the parent will
25 permit contact or the disclosure of the parent's identity to

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1 the adoptee or the adoptee's prospective adoptive parents. "

2 Section 60. Section 32A-5-13 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 140, as amended) is amended to read:

4 "32A-5-13. INDEPENDENT ADOPTIONS--REQUEST FOR PLACEMENT--
5 PLACEMENT ORDER--CERTIFICATION. --

6 A. When a placement order is required, the
7 petitioner shall file a request with the court to allow the
8 placement. An order permitting the placement shall be obtained
9 prior to actual placement.

10 B. Only a pre-placement study that has been
11 prepared or updated within one year immediately prior to the
12 date of placement, approving the petitioner as an appropriate
13 adoptive parent, shall be filed with the court prior to
14 issuance of a placement order, except as provided in Subsection
15 C of Section 32A-5-12 NMSA 1978.

16 C. In order for a person to be certified to conduct
17 pre-placement studies, the person shall meet the standards
18 promulgated by the department. If the child is an Indian
19 child, the person shall meet the standards set forth in the
20 federal Indian Child Welfare Act of 1978.

21 D. The pre-placement study shall be conducted by an
22 agency or a person certified by the department to conduct the
23 study. A person or agency that wants to be certified to
24 perform pre-placement studies shall file documents verifying
25 their qualifications with the department. The department shall

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1 publish a list of persons or agencies certified to conduct a
2 pre-placement study. If necessary to defray additional costs
3 associated with compiling the list, the department may assess
4 and charge a reasonable administrative fee to the person or
5 agency listed.

6 E. When a person or agency that wants to be
7 certified to perform pre-placement studies files false
8 documentation with the department, the person or agency shall
9 be subject to the provisions of Section 32A-5-42 NMSA 1978.

10 F. A request for placement shall be filed and
11 verified by the petitioner and shall allege:

12 (1) the full name, age and place and duration
13 of residence of the petitioner and, if married, the place and
14 date of marriage;

15 (2) the date and place of birth of the
16 adoptee, if known, or the anticipated date and place of birth
17 of the adoptee;

18 (3) a detailed statement of the circumstances
19 and persons involved in the proposed placement;

20 (4) if the adoptee has been born, the address
21 where the adoptee is residing at the time of the request for
22 placement;

23 (5) if the adoptee has been born, the places
24 where the adoptee has lived within the past three years and the
25 names and addresses of the persons with whom the adoptee has

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1 lived. If the adoptee is in the custody of an agency or the
2 department, the address shall be the address of the agency or
3 the county office of the department from which the child was
4 placed;

5 (6) the existence of any court orders that are
6 known to the petitioner and that regulate custody, visitation
7 or access to the adoptee, copies of which shall be attached to
8 the request for placement as exhibits; if copies of any such
9 court orders are unavailable at the time of filing the request
10 for placement, the copies shall be filed prior to the issuance
11 of the order of placement;

12 (7) that the petitioner desires to establish a
13 parent and child relationship between the petitioner and the
14 adoptee and that the petitioner is a fit and proper person able
15 to care and provide for the adoptee's welfare;

16 (8) the relationship, if any, of the
17 petitioner to the adoptee;

18 (9) whether the adoptee is subject to the
19 federal Indian Child Welfare Act of 1978, and, if so, the
20 petition shall allege the actions taken to comply with the
21 federal Indian Child Welfare Act of 1978 and all other
22 allegations required pursuant to that act;

23 (10) whether the adoption is subject to the
24 Interstate Compact on the Placement of Children and what
25 specific actions have been taken to comply with the Interstate

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1 Compact on the Placement of Children; and

2 (11) the name, address and telephone number of
3 the agency or investigator who has agreed to do the pre-
4 placement study.

5 G. The request for placement shall be served on all
6 parties entitled to receive notice of the filing of a petition
7 for adoption, as provided in Section 32A-5-27 NMSA 1978. An
8 order allowing placement may be entered prior to service of the
9 request for placement.

10 H. A hearing and the court decision on the request
11 for placement shall occur within thirty days of the filing of
12 the request.

13 I. As part of any court order authorizing placement
14 under this section, the court shall find whether the pre-
15 placement study complies with Section 32A-5-14 NMSA 1978 and
16 that the time requirements concerning placement set forth in
17 this section have been met. "

18 Section 61. Section 32A-5-14.1 NMSA 1978 (being Laws
19 2003, Chapter 294, Section 8 and Laws 2003, Chapter 321,
20 Section 8) is amended to read:

21 "32A-5-14.1. CRIMINAL HISTORY RECORDS CHECK--BACKGROUND
22 CHECKS. --

23 A. A nationwide criminal history records check
24 shall be conducted on [every] a person who files a petition to
25 adopt a child, on prospective foster parents and on other

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1 adults residing in the prospective adoptive or foster parent's
2 household. A person who files a petition to adopt a child
3 shall provide the department with a set of fingerprints. The
4 department is authorized to use the set of fingerprints to
5 conduct a background check of the ~~[petitioner]~~ person providing
6 the fingerprints by submitting the fingerprints to the
7 department of public safety and the federal bureau of
8 investigation. The background check shall include federal,
9 state and local criminal records searches and statewide abuse
10 and neglect searches for all past addresses of the person being
11 checked.

12 B. Criminal history records obtained by the
13 department pursuant to the provisions of this section are
14 confidential. Criminal history records obtained pursuant to
15 the provisions of this section shall not be used for any
16 purpose other than conducting background checks. Criminal
17 history records obtained pursuant to the provisions of this
18 section and the information contained in those records shall
19 not be released or disclosed to any other person or agency,
20 except pursuant to a court order or with the written consent of
21 the person who is the subject of the records.

22 C. A person who releases or discloses criminal
23 history records or information contained in those records in
24 violation of the provisions of this section is guilty of a
25 misdemeanor and shall be sentenced pursuant to the provisions

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1 of Section 31-19-1 NMSA 1978. "

2 Section 62. Section 32A-5-17 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 144, as amended) is amended to read:

4 "32A-5-17. PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE
5 REQUIRED. --

6 A. Consent to adoption or relinquishment of
7 parental rights to the department or an agency licensed by the
8 state of New Mexico shall be required of the following:

9 (1) the adoptee, if [~~ten~~] fourteen years of
10 age or older, except when the court finds that the adoptee does
11 not have the mental capacity to give consent;

12 (2) the adoptee's mother;

13 (3) the adoptee's proposed adoptive [~~father~~]
14 parent;

15 (4) the presumed father of the adoptee;

16 (5) the adoptee's acknowledged father;

17 (6) the department or the agency to whom the
18 adoptee has been relinquished that has placed the adoptee for
19 adoption or the department or the agency that has custody of
20 the adoptee; provided, however, that the court may grant the
21 adoption without the consent of the department or the agency if
22 the court finds the adoption is in the best interests of the
23 adoptee and that the withholding of consent by the department
24 or the agency is unreasonable; and

25 (7) the guardian of the adoptee's parent when,

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1 pursuant to provisions of the Uniform Probate Code, that
2 guardian has express authority to consent to adoption.

3 B. In any adoption involving an Indian child,
4 consent to adoption by the petitioner or relinquishment of
5 parental rights shall be obtained from an "Indian custodian",
6 as required pursuant to the provisions of the federal Indian
7 Child Welfare Act of 1978.

8 C. A consent or relinquishment executed by a parent
9 who is a minor shall not be subject to avoidance or revocation
10 solely by reason of the parent's minority. "

11 Section 63. Section 32A-5-21 NMSA 1978 (being Laws 1993,
12 Chapter 77, Section 148) is amended to read:

13 "32A-5-21. FORM OF CONSENT OR RELINQUISHMENT. --

14 A. Except when consent or relinquishment is
15 implied, a consent or relinquishment by a parent shall be in
16 writing, signed by the parent consenting or relinquishing and
17 shall state the following:

- 18 (1) the date, place and time of execution;
19 (2) the date and place of birth of the adoptee
20 and any names by which the adoptee has been known;
21 (3) if a consent to adoption is being
22 executed, the identity of the petitioner, if known, or when the
23 adoption is an independent adoption and the identity of the
24 petitioner is unknown, how the petitioner was selected by the
25 consenting parent;

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1 (4) if a relinquishment of parental rights is
2 being executed, the name and address of the agency or the
3 department;

4 (5) that the person executing the consent or
5 relinquishment has been counseled, as provided in Section
6 [~~32-5-22~~] 32A-5-22 NMSA 1978, by a certified counselor of the
7 person's choice and with this knowledge the person is
8 voluntarily and unequivocally consenting to the adoption of the
9 named adoptee;

10 (6) that the consenting party has been advised
11 of the legal consequences of the relinquishment or consent
12 either by independent legal counsel or a judge;

13 (7) if the adoption is closed, that all parties
14 understand that the court will not enforce any contact,
15 regardless of any informal agreements that have made between
16 the parties;

17 [~~(7)~~] (8) that the consent to or
18 relinquishment for adoption cannot be withdrawn;

19 [~~(8)~~] (9) that the person executing the
20 consent or relinquishment has received or been offered a copy
21 of the consent or relinquishment;

22 [~~(9)~~] (10) that a counseling narrative has
23 been prepared pursuant to department regulations and is
24 attached to the consent or relinquishment;

25 [~~(10)~~] (11) that the person who performed the

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1 counseling meets the requirements set forth in the Adoption
2 Act; and

3 [~~(11)~~] (12) that the person executing the
4 consent or relinquishment waives further notice of the adoption
5 proceedings.

6 B. The consent of an adoptee, if [~~over the age of~~
7 ~~ten years~~] fourteen years of age or older, shall be in writing,
8 signed by the adoptee, consenting to the adoption and shall
9 state the following:

- 10 (1) the date, place and time of execution;
- 11 (2) the date and place of birth of the adoptee
12 and any names by which the adoptee has been known;
- 13 (3) the name of the petitioner;
- 14 (4) that the adoptee has been counseled
15 regarding the consent pursuant to department regulation;
- 16 (5) that the adoptee has been advised of the
17 legal consequences of the consent;
- 18 (6) that the adoptee is voluntarily and
19 unequivocally consenting to the adoption;
- 20 (7) that the consent or relinquishment cannot
21 be withdrawn;
- 22 (8) that a counseling narrative has been
23 prepared pursuant to department regulation and is attached to
24 the consent; and
- 25 (9) that the person who performed the

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1 counseling meets the requirements set forth in the Adoption
2 Act.

3 C. In cases when the consent or relinquishment is
4 in English and English is not the first language of the
5 consenting or relinquishing person, the person taking the
6 consent or relinquishment shall certify in writing that the
7 document has been read and explained to the person whose
8 consent or relinquishment is being taken in that person's first
9 language, by whom the document was so read and explained and
10 that the meaning and implications of the document are fully
11 understood by the person giving the consent or relinquishment.

12 D. Unconditional consents or relinquishments are
13 preferred and therefore, conditional consents or
14 relinquishments [~~must~~] shall be for good cause and approved by
15 the court. However, if the condition is for a specific
16 petitioner or the condition requires the other parent to
17 consent before the decree of adoption is entered, the condition
18 shall be deemed for good cause. In any event, [~~any and~~] all
19 conditions permitted under this subsection shall be met within
20 one hundred eighty days of the execution of the conditional
21 consent or relinquishment or the conclusion of any litigation
22 concerning the petition for adoption. The court may grant an
23 extension of this time for good cause.

24 E. Agency or department consents required pursuant
25 to the provisions of Section [~~32-5-17~~] 32A-5-17 NMSA 1978 shall
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1 state the following:

- 2 (1) the date, place and time of execution;
- 3 (2) the date and place of birth of the adoptee
4 and any names by which the adoptee has been known;
- 5 (3) the name of the petitioner; and
- 6 (4) the consent of the agency or department.

7 F. A consent or relinquishment taken by an
8 individual appointed to take consents or relinquishments by an
9 agency shall be notarized, except that a consent or
10 relinquishment signed in the presence of a judge need not be
11 notarized. A hearing before the court for the purpose of
12 taking a consent or relinquishment shall be heard by the court
13 within seven days of request for setting.

14 G. No consent to adoption or relinquishment of
15 parental rights shall be valid if executed within forty-eight
16 hours after the adoptee's birth. Consent to adoption or
17 relinquishment of parental rights involving an Indian child
18 shall comply with the more stringent requirements of the
19 federal Indian Child Welfare Act of 1978.

20 H. The requirements of a consent to adoption or
21 relinquishment of parental rights involving an Indian child
22 and the rights of a parent of an Indian child to withdraw the
23 consent or relinquishment shall be governed by the relevant
24 provisions of the federal Indian Child Welfare Act of 1978.

25 I. A consent to or relinquishment for adoption

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1 shall not be withdrawn prior to the entry of a decree of
2 adoption unless the court finds, after notice and opportunity
3 to be heard is afforded to the petitioner, to the person
4 seeking the withdrawal and to the agency placing a child for
5 adoption, that the consent or relinquishment was obtained by
6 fraud. In no event shall a consent or relinquishment be
7 withdrawn after the entry of a decree of adoption. "

8 Section 64. Section 32A-5-23 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 150, as amended) is amended to read:

10 "32A-5-23. PERSONS WHO MAY TAKE CONSENTS OR
11 RELINQUISHMENTS. --

12 A. A consent to adoption or relinquishment of
13 parental rights shall be signed before and approved on the
14 record by [(1)] a judge who has jurisdiction over adoption
15 proceedings, within or without this state, and who is in the
16 jurisdiction in which the child is present or in which the
17 parent resides at the time it is signed [or

18 ~~(2) an individual appointed by the department~~
19 ~~to take consents or relinquishments or by an agency licensed by~~
20 ~~the state, but only when the consenting or relinquishing parent~~
21 ~~is represented by independent legal counsel and a guardian ad~~
22 ~~litem has been appointed for any adoptee whose consent is~~
23 ~~required].~~

24 B. No parent may relinquish parental rights to the
25 department or an agency without the department's or the

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1 agency' s consent.

2 C. The consent or relinquishment shall be filed
3 with the court in which the petition for adoption has been
4 filed before adjudication of the petition. "

5 Section 65. Section 32A-5-24 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 151) is amended to read:

7 "32A-5-24. RELINQUISHMENTS TO THE DEPARTMENT. --

8 A. When a parent elects to relinquish parental
9 rights to the department, a petition to accept the
10 relinquishment shall be filed, unless an abuse or neglect
11 proceeding is pending. If an abuse or neglect proceeding is
12 pending, the relinquishment shall be heard in the context of
13 that proceeding.

14 B. In all hearings regarding relinquishment of
15 parental rights to the department, the child shall be
16 represented by a guardian ad litem.

17 C. If a proposed relinquishment of parental rights
18 is not in contemplation of adoption, the court shall not allow
19 the relinquishment of parental rights unless it finds that good
20 cause exists, that the department has made reasonable efforts
21 to preserve the family and that relinquishment of parental
22 rights is in the child's best interest. Whenever a parent
23 relinquishes his parental rights pursuant to this subsection,
24 the parent shall remain financially responsible for the child.
25 The court may order the parent to pay the reasonable costs of

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1 support and maintenance of the child. The court may use the
2 child support guidelines set forth in Section 40-4-11.1 NMSA
3 1978 to calculate a reasonable payment.

4 D. When a parent relinquishes the parent's rights
5 under this section, the parent shall be notified that no
6 contact will be enforced by the court, regardless of any
7 informal agreement, unless the parties have agreed to an open
8 adoption pursuant to Section 32A-5-35 NMSA 1978. The consent
9 for relinquishment shall be in writing and shall state that the
10 parties understand that any informal agreement allowing contact
11 will not be enforced by the courts."

12 Section 66. Section 32A-5-34 NMSA 1978 (being Laws 1993,
13 Chapter 77, Section 161, as amended) is amended to read:

14 "32A-5-34. FEES AND CHARGES--DAMAGES. --

15 A. Prior to the final hearing on the petition, the
16 petitioner shall file a full accounting of all disbursements of
17 anything of value made or agreed to be made by or on behalf of
18 the petitioner in connection with the adoption. The accounting
19 report shall be signed under penalty of perjury. The
20 accounting report shall be itemized in detail and shall show
21 the services reasonably relating to the adoption or to the
22 placement of the child for adoption that were received by the
23 parents of the child, by the child or by or on behalf of the
24 petitioner. The report shall also include the dates of each
25 payment and the names and addresses of each attorney,

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1 physician, hospital, licensed adoption agency or other person
2 or organization who received any funds or any other thing of
3 value from the petitioner in connection with the adoption or
4 the placement of the child with him or who participated in any
5 way in the handling of the funds, either directly or
6 indirectly.

7 B. A prospective adoptive parent, or another person
8 acting on behalf of a prospective adoptive parent, shall make
9 payments for services relating to the adoption or to the
10 placement of the adoptee for adoption for allowed expenses only
11 to third party vendors, as reasonably practical. These
12 payments shall consist of reasonable and actual fees or charges
13 for:

14 (1) the services of an agency in connection
15 with an adoption;

16 (2) medical, hospital, nursing,
17 pharmaceutical, traveling or other similar expenses incurred by
18 a mother or the adoptee in connection with the birth or any
19 illness of an adoptee;

20 (3) reasonable counseling services relating to
21 the adoption;

22 (4) living expenses of a mother and her
23 dependent children, including the adoptee, for a reasonable
24 time before the birth or placement of the adoptee and for no
25 more than six weeks after the birth or placement of the

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1 adoptee;

2 (5) expenses incurred for the purposes of full
3 disclosure;

4 (6) legal services, court costs and traveling
5 or other administrative expenses connected with an adoption,
6 including any legal service performed for a parent who consents
7 to the adoption of a child or relinquishes the child to an
8 agency;

9 (7) preparation of a pre-placement study and
10 of a post-placement report during the pendency of the adoption
11 proceeding; or

12 (8) any other service or expense the court
13 finds is reasonably necessary for services relating to the
14 adoption or to the placement of the adoptee for adoption.

15 C. Any person who makes payments that are not
16 permitted pursuant to the provisions of this section [~~shall be~~]
17 is in violation of [~~this article~~] the Adoption Act and subject
18 to the penalties set forth in Section 32A-5-42 NMSA 1978.

19 D. Any person who threatens or coerces a parent to
20 complete the relinquishment of parental rights or to complete
21 the consent to an adoption, by demanding repayment of expenses
22 or by any other threat or coercion, shall be liable to the
23 parent for compensatory and punitive damages.

24 E. The accounting required in Subsection A of this
25 section is not applicable to stepparent adoptions or to

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1 adoptions under the provisions of the Abuse and Neglect Act,
2 unless ordered by the court.

3 F. Nothing in this section shall be construed to
4 permit payment to a woman for conceiving and carrying a child."

5 Section 67. Section 32A-5-35 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 162, as amended) is amended to read:

7 "32A-5-35. OPEN ADOPTIONS. --

8 A. The parents of the adoptee and the petitioner
9 may agree to contact between the parents and the petitioner or
10 contact between the adoptee and one or more of the parents or
11 contact between the adoptee and relatives of the parents. An
12 agreement shall, absent a finding to the contrary, be presumed
13 to be in the best interests of the child and shall be included
14 in the decree of adoption. The contact may include exchange of
15 identifying or nonidentifying information or visitation between
16 the parents or the parents' relatives and the petitioner or
17 visitation between the parents or the parents' relatives and
18 the adoptee. An agreement entered into pursuant to this
19 section shall be considered an open adoption.

20 B. The court may appoint a guardian ad litem for
21 the adoptee. The court shall ~~[appoint]~~ adopt a presumption in
22 favor of appointing a guardian ad litem for the adoptee when
23 visitation between the biological family and the adoptee is
24 included in an agreement; however, this requirement may be
25 waived by the court for good cause shown. When an adoptive

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1 placement is made voluntarily through an agency or pursuant to
2 Section 32A-5-13 NMSA 1978, the court may, in its discretion,
3 appoint a guardian ad litem. If the child is fourteen years of
4 age or older, the court may appoint an attorney for the child.
5 In all adoptions other than those in which the child is placed
6 by the department, the court may assess the parties for the
7 cost of services rendered by the guardian ad litem or the
8 child's attorney. The duties of the guardian ad litem or
9 child's attorney end upon the filing of the decree, unless
10 otherwise ordered by the court.

11 C. In determining whether the agreement is in the
12 adoptee's best interests, the court shall consider the
13 adoptee's wishes, but the wishes of the adoptee shall not
14 control the court's findings as to the best interests of the
15 adoptee.

16 D. Every agreement entered into pursuant to
17 provisions of this section shall contain a clause stating that
18 the parties agree to the continuing jurisdiction of the court
19 and to the agreement and understand and intend that any
20 disagreement or litigation regarding the terms of the agreement
21 shall not affect the validity of the relinquishment of parental
22 rights, the adoption or the custody of the adoptee. [The
23 ~~provision of this subsection shall not apply to a biological~~
24 ~~parent who has voluntarily relinquished parental rights and~~
25 ~~consented to the adoption.]~~

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1 E. The court shall retain jurisdiction after the
2 decree of adoption is entered, if the decree contains an
3 agreement for contact, for the purpose of hearing motions
4 brought to enforce or modify an agreement entered into pursuant
5 to the provisions of this section. The court shall not grant a
6 request to modify the agreement unless the moving party
7 establishes that there has been a change of circumstances and
8 the agreement is no longer in the adoptee's best interests. "

9 Section 68. Section 32A-5-37 NMSA 1978 (being Laws 1993,
10 Chapter 77, Section 164) is amended to read:

11 "32A-5-37. STATUS OF ADOPTEE AND PETITIONER UPON ENTRY OF
12 DECREE OF ADOPTION. --

13 A. Once adopted, an adoptee shall take a name
14 designated by the petitioner, except in stepparent adoptions.
15 In stepparent adoptions, the adoptee shall take the new name
16 designated by the petitioner in the petition so long as the
17 petitioner's spouse and the child, if over the age of [~~ten~~]
18 fourteen years, consent to the new name. The name change need
19 not be requested in the petition.

20 B. After adoption, the adoptee and the petitioner
21 shall sustain the legal relation of parent and child as if the
22 adoptee were the biological child of the petitioner and the
23 petitioner were the biological parent of the child. The
24 adoptee shall have all rights and be subject to all of the
25 duties of that relation, including the right of inheritance

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1 from and through the petitioner, and the petitioner shall have
2 all rights and be subject to all duties of that relation,
3 including right of inheritance from and through the adoptee. "

4 Section 69. Section 32A-5-38 NMSA 1978 (being Laws 1993,
5 Chapter 77, Section 165) is amended to read:

6 "32A-5-38. BIRTH CERTIFICATES. --

7 A. Within thirty days after an adoption decree
8 becomes final, the petitioner shall prepare an application for
9 a birth certificate in the new name of the adoptee, showing the
10 petitioner as the adoptee's parent, and shall provide the
11 application to the clerk of the court. The [~~clerk of the~~
12 ~~court~~] petitioner shall forward the application:

13 (1) for a person born in the United States, to
14 the appropriate vital statistics office of the place, if known,
15 where the adoptee was born; or

16 (2) for all other persons, to the state
17 registrar of vital statistics. In the case of the adoption of
18 a person born outside the United States, if requested by the
19 petitioner, the court shall make findings, based on evidence
20 from the petitioner and other reliable state or federal
21 sources, on the date and place of birth of the adoptee. These
22 findings shall be certified by the court and included with the
23 application for a birth certificate.

24 B. The state registrar of vital statistics shall
25 prepare a birth record in the new name of the adoptee in

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1 accordance with the vital statistics laws, but subject to the
2 requirements of the Adoption Act as to the confidentiality of
3 adoption records. "

4 Section 70. Section 32A-5-39 NMSA 1978 (being Laws 1993,
5 Chapter 77, Section 166, as amended by Laws 2003, Chapter 294,
6 Section 6 and by Laws 2003, Chapter 321, Section 6) is amended
7 to read:

8 "32A-5-39. RECOGNITION OF FOREIGN DECREES. --

9 A. Every ~~[judgment]~~ decree or order of adoption
10 terminating the parent-child relationship or establishing the
11 relationship of parent and child by adoption ~~[issued pursuant~~
12 ~~to due process of law by the tribunals of any other~~
13 ~~jurisdiction within or without the United States]~~ entered by a
14 court or other entity in another country acting pursuant to
15 that country's law or pursuant to any convention or treaty or
16 intercountry adoption that the United States has ratified shall
17 be recognized in this state, so that the rights and obligations
18 of the parties as to matters within the jurisdiction of this
19 state shall be determined as though the ~~[judgment]~~ decree or
20 order of adoption were issued by the courts of this state.

21 B. A convention adoption in a foreign country that
22 is certified by the United States secretary of state shall be
23 recognized as a final adoption in this state. "

24 Section 71. Section 32A-5-40 NMSA 1978 (being Laws 1993,
25 Chapter 77, Section 167, as amended) is amended to read:

1 "32A-5-40. POST-DECREE OF ADOPTION ACCESS TO RECORDS. --

2 A. After the decree of adoption has been entered,
3 all court files containing records of judicial proceedings
4 conducted pursuant to the provisions of the Adoption Act and
5 records submitted to the court in the proceedings shall be kept
6 in separate locked files withheld from public inspection. Upon
7 application to the clerk of the court, the records shall be
8 open to inspection by a former parent if the adoptee is
9 eighteen years of age or older, by an adoptee if the adoptee is
10 eighteen years of age or older at the time application is made
11 for inspection, by the adoptive parent if the adoptee is under
12 eighteen years of age at the time application is made for
13 inspection, by the attorney of any party, by any agency that
14 has exercised guardianship over or legal custody of a child who
15 was the adoptee in the particular proceeding, by the department
16 or by an adoptee's sibling; provided that the identity of the
17 former parents and of the adoptee shall be kept confidential
18 unless the former parents and the adoptee have consented to the
19 release of identity. In the absence of consent to release
20 identity, the inspection shall be limited to the following
21 nonidentifying information:

- 22 (1) the health and medical histories of the
23 adoptee's biological parents;
24 (2) the health and medical history of the
25 adoptee;

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1 (3) the adoptee's general family background,
2 including ancestral information, without name references or
3 geographical designations;

4 (4) physical descriptions; and

5 (5) the length of time the adoptee was in the
6 care and custody of persons other than the petitioner.

7 B. After the entry of the decree of adoption, at
8 any time, a former parent may file with the court, with the
9 placing agency or with the department:

10 (1) a consent or refusal or an amended consent
11 or refusal to be contacted;

12 (2) a release of the former parent's identity
13 to the adoptee if the adoptee is eighteen years of age or older
14 or to the adoptive parent if the adoptee is under eighteen
15 years of age; or

16 (3) information regarding the former parent's
17 location or changes in background information.

18 C. Any changes to post-adoption access to records
19 referred to in Subsection B of this section shall be filed with
20 the court, the placing agency and the department.

21 [~~C.~~] D. The consent or refusal referred to in
22 Subsection B of this section shall be honored by the court, the
23 placing agency or the department unless for good cause the
24 court orders to the contrary.

25 [~~D.~~] E. At any time, an adoptee who is eighteen

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1 years of age or older may file with the court, a placing agency
2 or the department:

3 (1) information regarding the adoptee's
4 location; or

5 (2) a consent or refusal regarding opening of
6 the adoptee's adoption file to the adoptee's former parents.

7 [~~E.~~] F. If mutual authorizations for release of
8 identifying information by the parties are not available, an
9 adoptee who is eighteen years of age or older, the biological
10 parents if the adoptee is eighteen years of age or older or the
11 adoptive parents if the adoptee is under the age of eighteen
12 years may file a motion with the court to obtain the release of
13 identifying information for good cause shown. When hearing the
14 motion, the court shall give primary consideration to the best
15 interests of the adoptee, but shall also give due consideration
16 to the interests of the members of the adoptee's former and
17 adoptive families. In determining whether good cause exists
18 for the release of identifying information, the court shall
19 consider:

20 (1) the reason the information is sought;

21 (2) any procedure available for satisfying the
22 petitioner's request without disclosing the name or identity of
23 another individual, including appointment of a confidential
24 intermediary to contact the individual and request specific
25 information;

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1 (3) whether the individual about whom
2 identifying information is sought is alive;

3 (4) the preference, to the extent known, of
4 the adoptee, the adoptive parents, the former parents and other
5 members of the adoptee's former and adoptive families and the
6 likely effect of disclosure on those individuals;

7 (5) the age, maturity and expressed needs of
8 the adoptee;

9 (6) the report or recommendation of any
10 individual appointed by the court to assess the request for
11 identifying information; and

12 (7) any other factor relevant to an assessment
13 of whether the benefit to the adoptee of releasing the
14 information sought will be greater than the benefit to any
15 other individual of not releasing the information.

16 [F.] G. An adoptee shall have the right, for the
17 purpose of enrolling in the adoptee's tribe of origin, to
18 access information kept by the department. Information needed
19 by an adoptee to enroll in his tribe of origin may be requested
20 from the department by the following persons:

21 (1) the adoptee, after he reaches eighteen
22 years of age;

23 (2) when the adoptee is a child, his adoptive
24 parent or guardian; or

25 (3) an adoptee's descendant or, if the

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1 adoptee's descendant is a child, an adult representative for
2 the descendant.

3 ~~[G.]~~ H. When the department receives a request for
4 information regarding an adoptee's tribe of origin, the
5 department shall examine its records to determine if the
6 adoptee is of Indian descent. If the department establishes
7 that an adoptee is of Indian descent, the department shall:

8 (1) provide the ~~[requestor]~~ requester with the
9 tribal affiliation of the adoptee's biological parents;

10 (2) submit to the tribe information necessary
11 to establish tribal enrollment for the adoptee and to protect
12 any rights flowing from the adoptee's tribal relationship; and

13 (3) provide notice to the ~~[requestor]~~
14 requester of the department's submission of information to the
15 adoptee's tribe."

16 Section 72. Section 32A-5-45 NMSA 1978 (being Laws 1993,
17 Chapter 77, Section 172) is amended to read:

18 "32A-5-45. ADMINISTRATION OF SUBSIDIZED ADOPTIONS. --

19 A. The ~~[social services division of the]~~ department
20 shall promulgate all necessary regulations for the
21 administration of the program of subsidized adoptions or
22 placement with permanent guardians.

23 B. Subsidy payments may include payments to vendors
24 for medical and surgical expenses and payments to the adoptive
25 parents or permanent guardians for maintenance and other costs

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1 incidental to the adoption, care, training and education of the
2 child. The payments in any category of assistance shall not
3 exceed the cost of providing the assistance in foster care [~~and~~
4 ~~shall not be made after the child reaches eighteen years of~~
5 ~~age~~]. Payments shall not be made under this section after the
6 child reaches eighteen years of age, except for a child who is
7 enrolled in the medically fragile waiver program, in which case
8 the payments may extend until the child is twenty-one years of
9 age.

10 C. A written agreement between the adoptive family
11 or permanent guardians and the [~~social services division~~
12 ~~department~~] shall precede the decree of adoption or permanent
13 guardianship. The agreement shall incorporate the terms and
14 conditions of the subsidy plan based on the individual needs of
15 the child within the permanent family. In cases of subsidies
16 that continue for more than one year, there shall be an annual
17 redetermination of the need for a subsidy. The [~~social~~
18 ~~services division~~] department shall develop an appeal procedure
19 whereby a permanent family may contest a division determination
20 to deny, reduce or terminate a subsidy."

21 Section 73. Section 32A-15-1 NMSA 1978 (being Laws 1985,
22 Chapter 103, Section 1 and Laws 1985, Chapter 140, Section 1,
23 as amended) is amended to read:

24 "32A-15-1. SHORT TITLE. --Chapter 32A, Article 15 NMSA
25 1978 may be cited as the "New Mexico Children's and Juvenile
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1 Facility and Program Criminal Records Screening Act". "

2 Section 74. Section 32A-15-2 NMSA 1978 (being Laws 1985,
3 Chapter 103, Section 2 and Laws 1985, Chapter 140, Section 2)
4 is amended to read:

5 "32A-15-2. PURPOSE. --The purpose of the New Mexico
6 Children's and Juvenile Facility and Program Criminal Records
7 Screening Act is to comply with the provisions of Public Law
8 98-473 and Public Law 108-36 and to protect the safety and
9 welfare of children. "

10 Section 75. Section 32A-15-3 NMSA 1978 (being Laws 1985,
11 Chapter 103, Section 3 and Laws 1985, Chapter 140, Section 3,
12 as amended) is amended to read:

13 "32A-15-3. CRIMINAL HISTORY RECORDS CHECK--BACKGROUND
14 CHECKS. --

15 A. Nationwide criminal history record checks shall
16 be conducted on all operators, staff and employees and
17 prospective operators, staff and employees of child care
18 facilities, including every facility or program that has
19 primary custody of children for twenty hours or more per week,
20 and juvenile detention, correction or treatment facilities.

21 Nationwide criminal history record checks shall also be
22 conducted on all prospective foster or adoptive parents and
23 other adult relatives and non-relatives residing in the
24 prospective foster or adoptive parent's household. The
25 objective of conducting the record checks is to protect the

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underscored material = new
[bracketed material] = delete

1 children involved and promote the children's safety and welfare
2 while receiving service from the facilities and programs.

3 B. The department shall fingerprint all operators,
4 staff and employees and prospective operators, staff and
5 employees of child care facilities and all prospective foster
6 ~~[parents and licensed foster parents]~~ or adoptive parents and
7 other adult relatives and non-relatives residing in the
8 prospective foster or adoptive parent's household. The
9 department shall conduct a background check of all operators,
10 staff and employees and prospective operators, staff and
11 employees of child care facilities and all prospective foster
12 ~~[parents and licensed foster parents by submitting]~~ or adoptive
13 parents and other adult relatives and non-relatives residing in
14 the prospective foster or adoptive parent's household and shall
15 submit a fingerprint card for those individuals to the
16 department of public safety and the federal bureau of
17 investigation for this purpose.

18 C. Criminal history records obtained by the
19 department pursuant to the provisions of this section are
20 confidential. The department is authorized to use criminal
21 history records obtained from the federal bureau of
22 investigation to conduct background checks on prospective
23 operators, staff and employees of child care facilities and
24 foster parents.

25 D. Criminal history records obtained pursuant to

1 the provisions of this section shall not be used for any
2 purpose other than conducting background checks. Criminal
3 history records obtained pursuant to the provisions of this
4 section and the information contained in those records shall
5 not be released or disclosed to any other person or agency,
6 except pursuant to a court order or with the written consent of
7 the person who is the subject of the records.

8 E. A person who releases or discloses criminal
9 history records or information contained in those records in
10 violation of the provisions of this section is guilty of a
11 misdemeanor and shall be sentenced pursuant to the provisions
12 of Section 31-19-1 NMSA 1978. "

13 Section 76. REPEAL. --

14 A. Sections 32A-3-1 and 32A-3A-5 NMSA 1978 (being
15 Laws 1993, Chapter 77, Section 62 and Laws 1993, Chapter 77,
16 Section 67) are repealed.

17 B. Laws 2003, Chapter 225, Section 10 is repealed.

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